Fieldcrest Cannon, Inc. *and* Amalgamated Clothing and Textile Workers Union, AFL–CIO. Cases 11–CA–14494, 11–CA–14584, 11–CA–14643, 11–CA–14723, 11–CA–14730 (Formerly 15–CA–11679), 11–CA–14735 (Formerly 15–CA–11679), 11–CA–14771, 11–CA–14815, 11–CA–15006, and 11–RC–5776

August 25, 1995

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND BROWNING

On March 1, 1994, Administrative Law Judge Howard I. Grossman issued the attached decision. The Respondent and the Charging Party Petitioner filed exceptions and supporting briefs. The General Counsel and the Charging Party Petitioner filed answering briefs, and the Respondent filed reply briefs. On April 29, 1994, the General Counsel filed a motion for extraordinary remedies.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[1] findings,[2] and conclusions and to adopt the recommended Order.[3]

[1] The Respondent moved for a new trial before a different administrative law judge on the grounds that the judge prejudged the credibility of the witnesses and the allegations of the complaint in a manner that demonstrated bias and prejudice towards the Respondent. We have carefully reviewed the record and we conclude that the motion to disqualify was untimely filed. Sec. 102.37 of the Board's Rules and Regulations states that a party may request that a judge withdraw from the proceeding at any time before the judge files his or her decision by filing with the judge ''with due diligence'' and ''promptly upon the discovery of the alleged facts'' an affidavit setting forth the grounds for disqualification. The judge issued his decision on March 1, 1994, and the Respondent did not file its motion to disqualify until April 29, 1994. Under these circumstances, we find that the motion was untimely filed. Even assuming the motion were timely filed, we find no evidence in the record or decision indicating that the judge was biased against the Respondent or that he prejudged the credibility of witnesses. Accordingly, we deny the Respondent's motion for a new trial before a different judge.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In the judge's discussion of employee Elboyd Deal's discharge, the judge credited the testimony of Deal that he did not make the alleged threat attributed to him, i.e., that he stated that ''Kenny would look good in a wheelchair too.'' In view of this credibility resolution, we find it unnecessary to rely on the judge's subsequent statement that, ''even if made,'' the statement did not constitute a threat of immediate harm to anyone.

1. The judge found that the Respondent violated Section 8(a)(3) and (1) when it removed employee Robin Teal from a position as a temporary supervisor because she supported the Union. At various times throughout the 3-year period prior to the election, Teal served as a temporary fill-in supervisor, at higher pay, when her regular supervisor was absent. During the election campaign, Teal actively supported the Union.

In its exceptions, the Respondent contends that the judge misapplied the appropriate legal standards in reaching his conclusions. The Respondent contends that it ceased using Teal as a temporary supervisor ''because she does not support the Company's philosophy with regard to unionization of its employees.'' The Respondent asserts that the purpose and policy behind the Act's exclusion of supervisors from its coverage would be thwarted if an employer is forced to use employees who do not support management's philosophy on unionization as supervisors. The Respondent argues that an employer's efforts to avoid unionization are undermined if a supervisor is known to openly oppose the employer's position after working hours. We disagree.

It is well established ''that an employer may deny reemployment as a rank-and-file worker to an employee who, during the time when he had supervisory status, engaged in prounion activity.'' *Gino Morena Enterprises*, 287 NLRB 1327, 1327 fn. 3 (1988). Here, however, there was no evidence that Teal, while acting as a supervisor, engaged in prounion activity. The Respondent concedes that she did not overtly support the Union by campaigning for the Union or by wearing

[3] In the remedy and recommended Order sections of his decision, the judge recommended that the Respondent be ordered to return Joanne Diggs to her former position as an instructor, from which it removed her on about July 1, 1991, and to make her whole for any difference in pay between her job as an instructor and her new job as a hemmer. The judge noted that although Diggs was not alleged as a discriminatee, the General Counsel announced at the hearing an intention to seek a make-whole remedy for her, without opposition from the Respondent. The judge, however, inadvertently omitted this finding from his Conclusions of Law. We find that the matter was fully litigated, and that the judge's factual conclusions, set forth in sec. II,U,3 of his decision, support finding a violation of Sec. 8(a)(3) and (1) in the elimination of Diggs' instructor duties. Accordingly, we shall add this finding to the judge's Conclusions of Law.

The judge failed to include a cease-and-desist order based on the Respondent's granting of a wage increase to nonunion employees, without granting a comparable increase to the unionized employees, in violation of Sec. 8(a)(5), (3), and (1). We have amended the Order and notice to include this remedy.

In fn. 2 of his decision, the judge incorrectly cited *Houston Coca Cola Bottling Co.*, 256 NLRB 520 (1981); in sec. II,H,2,a, the judge mistakenly stated that the ''Union'' would probably be out of business, instead of the ''Company;'' in his discussion of Elboyd Deal's discharge, the judge inadvertently stated that the ''flurry of supervisory activity'' occurred on October 20, when in fact it was August 20; and in par. 3 of the ''Factual and legal conclusions'' section concerning the 5.5-percent wage increase given to nonunion employees, the judge inadvertently stated that the increase was given to union employees. These errors do not affect the outcome of the case.

union insignia while serving as temporary supervisor. Nor is there any basis in Board precedent for the Respondent's contention that Teal's personal thoughts or beliefs in support of the Union, without evidence that she engaged in prounion conduct while she was a supervisor, justifies her removal from the temporary supervisory position.

In *Advanced Mining Group*, 260 NLRB 486 (1982), the Board adopted the judge's finding that an employer unlawfully denied an employee assignment as a temporary supervisor in an attempt ''to demonstrate to the employees that those who supported the Union would be punished and those who opposed the Union would be rewarded.'' Id. at 503. Similarly here, we conclude that the Respondent unlawfully denied Teal the temporary supervisory position in order to demonstrate to employees that employee union supporters would be punished. Other employees, as well as Teal herself, would inevitably get the message from the Respondent's action that union support could easily lead to reduced opportunities for advancement in the Respondent's hierarchy. The Respondent admits that it refused to give Teal the temporary assignment based only on the union sympathies she had held as an employee and presumably still would hold while acting as a temporary supervisor. Such conduct is patently unlawful in the absence of any evidence that she engaged in overt conduct in support of the Union while serving in a supervisory capacity.[4] Accordingly, we agree with the judge's finding that by refusing to give Teal temporary supervisory assignments the Respondent violated Section 8(a)(3) and (1).

2. For the reasons stated by the judge, we affirm his finding that the Respondent violated Section 8(a)(3) and (1) by withholding a 5.5-percent wage increase from the employees represented by the Union while granting a 5.5-percent pay increase to its nonunion employees. We also affirm the judge's finding that the Respondent violated Section 8(a)(5) and (1) by failing to bargain in good faith with the Union over the wage increase, but do so for the reasons stated below.

The Board addressed the issue of bad-faith bargaining in the context of a union campaign in *Eastern Maine Medical Center*, 253 NLRB 224 (1980), enfd. 658 F.2d 1 (1st Cir. 1981). There, the Board adopted the judge's finding that an employer violated Section 8(a)(5) and (1) by withholding a wage increase and other fringe benefits from union-represented employees, while at the same time granting those benefits to its unrepresented employees. The judge in *Eastern Maine* found that the discriminatory withholding of the wage increase was central to the employer's strategy to frustrate reaching agreement, and that when it finally did propose an increase, it was less than the unit employees would have received had they not selected the union. The judge concluded that the employer ''failed to bargain in good faith and instead bargained with a determination not to reach an agreement and to undermine and destroy the Union as bargaining representative.'' Id. at 244.

Applying these principles to this case, we find that the Respondent failed to bargain in good faith with the Union over the wage increase. The Respondent's discriminatory departure from its practice of granting identical wage benefits to its represented and unrepresented employees indicates the Respondent's desire to frustrate bargaining and to ''undermine and destroy'' the Union. The Respondent's extreme union animus is further evidenced by the numerous unfair labor practice violations discussed in the judge's decision. Such a pattern of discriminatory conduct is inconsistent with good-faith bargaining, and reflects the Respondent's determination not to reach agreement with the Union.

In addition, the Respondent's agents made statements both during and outside the negotiations which strongly suggested that its wage-increase proposals to the Union were intended both to punish the Union for its attempts to organize the unorganized plants and to undermine any further attempts at organization. These statements came from the highest levels of the Respondent's management as well as several supervisors on the shop floor. When a union representative broached the subject of the wage negotiations to the Respondent's personnel administrator, Bob Moore, Moore was hostile, declaring that the Respondent was not going to put 5.5 percent on the table as long as the Union was ''harassing the Company and being irresponsible.'' The general manager of one of the unionized plants, in Columbus, Georgia, told an employee and the local union president that the Respondent offered them a lower raise than that given to the nonunion plants because they were an organized plant. Several front-line supervisors at the nonunion plants

[4] Member Stephens notes that in *Pacific American Shipowners Assn.*, 98 NLRB 582 (1952), in which the Board held that the Act does not protect applicants for supervisory positions from discrimination in hiring, the Board distinguished the situation of individuals working as 2(3) employees at the time they seek promotion to a supervisory position in their place of employment (id. at 597):

> [W]e cannot agree that our decision herein affects adversely the rights of nonsupervisory employees in the particular respect which concerns our dissenting colleague: *viz*, where a rank and file employee of a particular employer, who applies to his employer for promotion to a supervisory vacancy, is told that he will not receive consideration for promotion because he has been an active union member. A refusal to accord an actual employee the normal consideration for promotion to a higher position, albeit that of supervisor, based on protected concerted activity during such employment, would clearly be a violation of the rights of nonsupervisory employees. [Footnote omitted.]

See also *NLRB v. Local 725 Plumbers*, 572 F.2d 550, 552–553 (5th Cir. 1978) (employee who cycled in and out of supervisory jobs pursuant to hiring hall referrals protected under Sec. 8(b)(1)(A) against union's discriminatory refusal to refer him to a supervisory position).

candidly told employees at those plants that the object of the Respondent's strategy in offering a lower wage increase in negotiations was to discredit the Union and to drive it out of the plant. These statements leave little doubt that the Respondent was not acting in good faith when it proposed and granted its employees in the unionized plants a lower wage increase than the one granted to the nonunion plants. Accordingly, we find that the Respondent violated Section 8(a)(5) and (1) by failing to bargain in good faith over the wage increase.[5]

3. The remedy section of the judge's decision recommends that the Respondent be ordered to make whole its union-represented employees for any monetary loss they may have suffered by reason of the Respondent's failure to include them in the September 9, 1991 wage increase given to nonunion employees. The Respondent contends that the Board lacks authority to compel it to propose or agree to a 5.5-percent wage increase. We find no merit to this contention. We have concluded that the Respondent violated Section 8(a)(3) and (1) by withholding the wage increase from its represented employees in order to discourage support for the Union. In cases of discriminatory conduct, the Board traditionally orders that the affected employees be made whole. Indeed, the Board has compelled such a remedy in circumstances identical to those presented here. In *Eastern Maine*, 253 NLRB at 228, 248, the Board ordered the respondent to restore the status quo ante existing prior to its unlawful actions and to make whole employees who suffered monetary losses as a result of a discriminatorily withheld wage increase which bargaining unit employees would have received but for the respondent's unlawful conduct. Based on this precedent, we adopt the judge's recommendation that the Respondent be ordered to make whole the employees affected by the unlawfully withheld 5.5-percent wage increase.

4. The judge sustained Petitioner's Objection 18 based on his finding that a fair election was made impossible because of the Respondent's distribution of literature predicting plant closure and the loss of jobs if the employees selected the Union. In so finding, however, the judge found that ''it would serve no useful purpose'' to go through the additional evidence presented by the Petitioner to establish that B & C Associates, a public relations firm, was acting as an agent of the Respondent when it circulated posters and newspaper advertisements predicting plant closure and loss of jobs if the Union won the election. The Petitioner excepts to the judge's failure to find that the Respondent is liable for the conduct of B & C Associates. We agree with the Petitioner.

The advertisements created by B & C Associates were displayed on telephone poles in the City of Kannapolis, and within the plant. One advertisement features a picture of a nuclear explosion with the caption, ''There's more than one way to destroy a community. VOTE NO.'' Another advertisement shows a group of workers standing outside of a plant gate with the sign ''closed'' hanging on the gate. The caption reads, ''In the past decade, scores of textile plants have closed in North Carolina. Thousands of workers have lost their jobs. Fieldcrest Cannon lost $41 million last year. Vote NO union.'' These advertisements clearly conveyed to employees threats of job loss and plant closure if the Union won the election.

In order to hold the Respondent responsible for the threats contained in the advertisements, it is necessary to find that B & C Associates was acting as an agent of the Respondent at the time it distributed the materials. In determining whether a person is acting as the agent of another, the Board applies the common law principles of agency as set forth in the Restatement 2d, *Agency*, including the principles of apparent and actual authority. *Allegany Aggregates*, 311 NLRB 1165 (1993).

Here, the Respondent hired B & C Associates to create and display advertisements pursuant to a retainer agreement that covered the period of the Union's campaign. Although the advertisements described above were circulated in the name of ''Citizens Concerned for Cabarrus & Rowan Counties,'' they were paid for by the Respondent. The record also shows that representatives of B & C Associates dealt directly with Respondent's Vice President Ozzie Raines and CEO Jim Fitzgibbons regarding the public relations work to be performed. Regardless of its thinly-veiled attempt to distance itself from the Respondent by labeling its advertisements with the name of another group, it is clear from the facts that its retainer agreement was directly with the Respondent and that it dealt directly with the Respondent's principals, that B & C Associates received its marching orders from the Respondent. In these circumstances, we conclude that B & C Associates was an agent with actual authority to create and display the advertisements. The threats of job loss and plant closure contained in the advertisements are therefore attributable to the Respondent. Accordingly, we find that this additional evidence supports the judge's conclusion that the Respondent engaged in objectionable conduct sufficient to set aside the election.

[5] Member Stephens notes that nothing in this decision necessarily implies that an employer is required by the Act to grant represented employees benefits equal to or greater than those provided to its unrepresented employees. He agrees, however, that when, as here, an employer has always treated wages on a company-wide basis and deviates from that policy during collective-bargaining negotiations in a context of statements to the effect that employees are being punished for having selected union representation, the conduct violates Sec. 8(a)(5), (3), and (1) of the Act.

AMENDED REMEDY

We agree with the judge that the Respondent's unfair labor practices warrant a broad cease-and-desist order, requiring the Respondent to cease and desist from committing the specific violations found and from violating the Act ''in any other manner.'' In addition, in agreement with the General Counsel and the Charging Party, we find that the Respondent's unfair labor practices are so numerous, pervasive, and outrageous that special notice and access remedies are necessary to dissipate fully the coercive effects of the unfair labor practices found. See generally *Three Sisters Sportswear Co.*, 312 NLRB 853 (1993); *Texas Super Foods*, 303 NLRB 209 (1991); *Monfort of Colorado*, 298 NLRB 73 (1990), enfd. 965 F.2d 1538 (9th Cir. 1992); *S. E. Nichols, Inc.*, 284 NLRB 556 (1987), enfd. in relevant part 862 F.2d 952 (2d Cir. 1988); *Sambo's Restaurant*, 247 NLRB 777 (1980); *Haddon House Foods*, 242 NLRB 1057, 1058–1059 (1980), enfd. in relevant part 640 F.2d 392, 399–404 (D.C. Cir. 1981).[6] The special access remedies set forth below, however, are limited to the Respondent's nonunion plants in North Carolina in which we are ordering a second election. These access remedies are not necessary at the Respondent's plants where the employees already have union representation. Contrary to Member Stephens, we shall not limit the special reading remedies to the nonunion plants, and we shall require that the same notice covering all of the violations found herein shall be posted and read at all of the affected plants, both union and nonunion. In view of the corporate-wide nature of the Respondent's egregious and notorious unfair labor practices, this reading is necessary in order to convey the message to all employees, represented and unrepresented, that the Respondent is serious about remedying this unlawful conduct.

Accordingly, we shall order the Respondent to comply with the following additional remedies: (1) in addition to posting copies of the attached notice marked ''Appendix'' at its North Carolina, Virginia, Alabama, and Georgia facilities, publish the notice in the Respondent's internal newsletter, and mail copies of the notice to all its present employees and to all employees on the Respondent's payroll since April 29, 1991, when the Respondent began its unlawful conduct, and in addition post, mail, and publish in the same manner a Spanish language translation of the Board notice; all such notices, whether mailed, posted, or published, are to be signed personally by the Respondent's vice president for human resources, Ozzie Raines; (2) convene during working time all employees at the Respondent's North Carolina, Virginia, Alabama, and Georgia facilities, by shifts, departments, or otherwise, and have Ozzie Raines read the notice to the employees, or at Ozzie Raines' option, permit a Board agent to read the notice. If Ozzie Raines chooses to have a Board agent read the notice, he shall be present while the notice is read. In either event, the notice must also be read in Spanish;[7] (3) publish in local newspapers of general circulation a copy of the above notice two times a week for a period of 4 weeks and publish in all local Spanish newspapers a copy of the Spanish language translation of the notice; if, however, there exists no local Spanish publication in an area covered by one of the local newspapers, then a Spanish translation of the notice shall also be published in the local newspaper; (4) supply the Union, upon request made within 1 year of the date of this Decision and Order, the names and addresses of its current unit employees; (5) upon request, grant the Union and its representatives reasonable access to the Respondent's bulletin boards and all places where notices to employees are customarily posted; (6) upon request, grant the Union reasonable access to the Respondent's facilities in nonwork areas during employees' nonwork time; (7) give notice of, and equal time and facilities for the Union to respond to, any address made by the Respondent to its employees on the question of union representation; and (8) afford the Union the right to deliver a 30-minute speech to employees on working time prior to any Board election which may be scheduled in which the Union is a participant in a time frame of not more than 10 working days before, but not less than 48 hours before, such election. Provisions (4) through (8) above shall

[6] The Respondent contends that special notice and access remedies are inappropriate because neither the General Counsel nor the Charging Party sought these remedies before the judge. We find no merit to this contention. The Board is not precluded from giving a particular remedy by the fact that the remedy was neither given by the judge nor initially requested by any of the parties. E.g., *Nabco Corp.*, 266 NLRB 687 fn. 1 (1983) (''It is well settled that the Board's power to remedy unfair labor practices is not limited by the parties' failure to request . . . any specific remedy.'').

[7] We have required that all notices be signed personally by the Respondent's vice president for human resources, Ozzie Raines, and that Ozzie Raines either read the notice to the Respondent's employees or be present while the notice is read by a Board agent, because Raines actively participated in the Respondent's antiunion campaign and unlawful conduct. We believe that the egregiousness of Raines' conduct and his high-level position warrant his reading of the notice, or his presence while the notice is read, in order to dispel the atmosphere of intimidation created by his unlawful conduct. See *Three Sisters Sportswear Co.*, 312 NLRB 853 (1993). Contrary to our dissenting colleague's assertion, and as fully discussed by the judge, we note that Raines was personally responsible for the unlawful wage increase given to nonunion employees, and the corresponding withholding of the same increase to unionized employees. Raines was featured in the video tape shown to employees that contained various 8(a)(1) threats, and he approved the campaign propaganda that threatened job loss and plant closure.

In light of the fact that we have ordered the Respondent to post, mail, and publish a Spanish language translation of the Board's notice, we also require that when the notice is read to the employees by Ozzie Raines or by a Board agent, it should also be read in Spanish.

apply for a period of 2 years from the date of the posting of the notice provided by the Order herein or until the Regional Director has issued an appropriate certification following a fair and free election, whichever comes first.[8]

The Union has requested that the second election be held off the Respondent's premises. In these circumstances, where the Respondent's unfair labor practices and objectionable conduct are so egregious and pervasive, the reasons favoring conducting a second election on the Respondent's premises have been substantially undermined. Accordingly, we shall order the Regional Director to conduct the second election off-premises at a neutral site the Regional Director deems appropriate.

ORDER

The National Labor Relations Board orders that the Respondent, Fieldcrest Cannon, Inc., Kannapolis and Concord, North Carolina; Fieldale, Virginia; Phenix City, Alabama; and Columbus, Georgia, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively interrogating employees concerning their union sympathies and activities.

(b) Threatening employees with discharge if they do not revoke their union authorization cards.

(c) Threatening employees with loss of benefits if they select the Union as their representative.

(d) Threatening employees with termination if they select the Union as their representative.

(e) Telling employees to resign because of their union activities or sympathies.

(f) Threatening employees with discharge if they meet with a representative of the National Labor Relations Board.

(g) Threatening employees with discharge for associating with known union supporters.

(h) Threatening employees with plant closure if they select the Union as their representative.

(i) Threatening Spanish-speaking employees with deportation or imprisonment if they sign union authorization cards.

(j) Threatening employees with unspecified reprisals for engaging in union activities.

(k) Threatening employees with unspecified reprisals if they select the Union as their representative.

(l) Ordering employees to wear antiunion T-shirts.

(m) Threatening to discharge employees because of their union activities.

(n) Threatening to suspend and otherwise discipline employees because of their union activities.

(o) Threatening employees with more stringent enforcement of rules if they select the Union as their representative.

(p) Telling employees that they were assigned additional work because of their union activities or sympathies.

(q) Making disparaging remarks about the Union in a context of other coercive statements.

(r) Engaging in, and creating the appearance of, surveillance of its employees' union activities.

(s) Threatening to watch an employee more closely because of his union activities.

(t) Restricting the movement of Union supporters within the plant because of their union activities, in order to restrict their access to other employees.

(u) Restricting prounion employees to their work areas, while simultaneously allowing antiunion employees to leave their work areas.

(v) Telling employees that bargaining will begin from scratch, in the context of other statements that benefits will be reduced.

(w) Telling employees that their selection of the Union would be futile.

(x) Promulgating or enforcing a rule prohibiting employees from talking about the Union on the job, while permitting discussion of other subjects.

(y) Promulgating or enforcing a rule prohibiting employees from engaging in union activities in nonwork areas during nonwork time.

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[8] We deny the Charging Party's request for a nonmajority bargaining order, because such an order is contrary to Board precedent. See *Gourmet Foods*, 270 NLRB 578 (1984). Chairman Gould and Member Browning, however, question the validity of *Gourmet Foods* insofar as it precludes consideration of a nonmajority bargaining order under any circumstances. They do not find, however, that the record here provides any basis for considering the merits of a nonmajority bargaining order.

We deny the Charging Party's request for reimbursement of its litigation expenses because the Respondent's defenses to the allegations tried in this case are not frivolous. *Heck's, Inc.*, 215 NLRB 765 (1974). We deny its requests for publication of the notice in the *Wall Street Journal* and in the Respondent's 10-K notice to investors and for reading of the notice to the Respondent's stockholders because these remedies go beyond what is needed to remedy the unfair labor practices committed against the Respondent's employees. We deny the Charging Party's request for payment of backpay to discriminatees without deduction for interim earnings as not within the compensatory remedial scheme of the Act. See *Phelps Dodge Corp. v. NLRB*, 313 U.S. 177, 197–198 (1941); *Republic Steel Corp. v. NLRB*, 311 U.S. 7 (1940). See also *Sure-Tan, Inc. v. NLRB*, 467 U.S. 883, 900–901 (1984). For the same reason, we also reject the Charging Party's request that the Board's notice contain a warning that the commission of further unfair labor practices by the Respondent will be punishable by monetary fines and by the seeking of individual contempt citations against the Respondent's top level management. If, in the future, the Respondent commits unfair labor practices, the Board will fashion an appropriate remedy at that time.

Chairman Gould, however, would grant the Charging Party's request that the Respondent's chief executive officer, James Fitzgibbons, read the Board's notice at the next meeting of the Respondent's stockholders, and that the notice be published in the Respondent's 10-K report. To eliminate corporate disrespect for employee rights, the Respondent's stockholders should be directly informed not only of the Respondent's unlawful actions but also that the Respondent will now comply with the Act and respect the legal rights of its employees.

(z) Polling its employees regarding their support for the Union.

(aa) Prohibiting employees from having prounion literature in their possession or at their workplace while allowing employees to have antiunion literature.

(bb) Allowing antiunion employees to return late from lunch periods while prohibiting prounion employees from doing the same.

(cc) Allowing antiunion employees to distribute campaign literature on company time in violation of its rules, while prohibiting prounion employees from doing the same.

(dd) Prohibiting only prounion employees from distributing union literature during nonwork time in nonwork areas.

(ee) Soliciting, remedying, or promising to remedy employee grievances in order to discourage employees' support of the Union.

(ff) Telling prounion employees that they will no longer receive higher paid temporary assignments, because of their support of the Union.

(gg) Promising employees unspecified benefits in order to induce them to withdraw their support of the Union.

(hh) Soliciting employees to withdraw affidavits submitted to the National Labor Relations Board.

(ii) Instructing employees to remove union insignia.

(jj) Allowing employees to buy first-quality goods at a discount in order to discourage them from supporting the Union.

(kk) Telling employees that their selection of the Union would inevitably lead to strikes, in the context of other unlawful statements.

(ll) Telling its union employees that, because of their support of the Union, they would receive a wage increase less than that granted to nonunion employees.

(mm) Telling its nonunion employees that they would receive a greater wage increase than the union employees.

(nn) Threatening employees with discharge if they go on strike.

(oo) Announcing a new rule more stringently enforcing work rules, in retaliation for the employees' union activity.

(pp) Telling an employee that a supervisor would no longer associate with her, and that she would not be used for further translating activities, because of her union sympathies.

(qq) Granting wage increases to nonunion employees and refusing to grant a comparable increase to union employees because of their support of the Union, and in violation of its duty to bargain in good faith with the Union.

(rr) Discouraging membership in Amalgamated Clothing and Textile Workers Union of America, AFL–CIO, or any other labor organization, by discharging, suspending, warning, or otherwise disciplining employees because of their union or other protected activity, or because they have given testimony before the Board, or by discriminating against them in any other manner with respect to their hire, tenure of employment, or terms and conditions of employment.

(ss) In any other manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Sylvia Walter, Alton W. Linton, Osborne Bennett, Wendy Ashcraft, Reginald Turner, Elboyd Deal, Charles Cordle, Ronald Pharr, Earl White, Roy Walters, Ronald Teeter, Susan Cavin, and Cathy Thompson immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

(b) Make whole Elboyd Deal and Alton W. Linton for any loss of earnings and other benefits suffered as a result of the unlawful actions against them.

(c) Reassign Robin Teal to her former position as temporary supervisor, and Oreida Clarke to her former position as a translator, and make each of them whole for any loss of earnings and other benefits suffered as a result of the Respondent's unlawful action against them.

(d) Reassign Joanne Diggs to her former position as an instructor, and make her whole for any loss of earnings and other benefits suffered as a result of her assignment to the job of hemmer on about July 1, 1991.

(e) Reassign Eldridge Henry to the same duties which he had prior to the discriminatory assignment of more onerous work to him.

(f) Make whole employees for any loss of earnings and other benefits suffered as a result of the Respondent's discriminatory withholding of a wage increase.

(g) Remove from its files any reference to the unlawful discharges, suspensions, and warnings and notify the employees in writing that this has been done and that the unlawful actions will not be used against them in any way.

(h) Rescind its unlawful rules described in the judge's Conclusions of Law 1(x), 1(y), 1(aa), 1(bb), 1(cc), 1(dd), and 1(oo), and publish notices to employees that such rules have been rescinded, in conspicuous places including all places where notices to employees are customarily posted.

(i) Supply the Union, upon request made within 1 year of the date of this Decision and Order, the full names and addresses of its current unit employees employed at its nonunion plants in North Carolina.

(j) On request, grant the Union and its representatives reasonable access to the Respondent's bulletin boards and all places where notices to employees are customarily posted in its nonunion plants in North Carolina.

(k) On request, grant the Union reasonable access to the Respondent's nonunion North Carolina facilities in nonwork areas during employees' nonwork time.

(l) Give the Union notice of, and equal time and facilities for the Union to respond to, any address made by the Respondent to its employees at its nonunion plants in North Carolina on the question of union representation.

(m) Afford the Union the right to deliver a 30-minute speech to employees on working time prior to any Board election which may be scheduled involving the Respondent's employees at its North Carolina plants in which the Union is a participant in a time frame of not more than 10 working days before, but not less than 48 hours before, such election. [Paragraphs (i) through (m) above shall apply for a period of 2 years from the date of the posting of the notice provided by the Order herein or until the Regional Director has issued an appropriate certification following a fair and free election, whichever comes first.]

(n) On request, bargain with the Union as the exclusive representative of employees in the following appropriate unit concerning terms and conditions of employment and, if any understanding is reached, embody the understanding in a signed agreement:

> All production and maintenance employees, excluding office clerical employees, guards, and supervisors as defined in the Act, employed in separate units at the Respondent's plants located in Eden, North Carolina; Fieldale, Virginia; Phenix City, Alabama; and Columbus, Georgia.

(o) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(p) Post at its plants located in Kannapolis, North Carolina; Concord, North Carolina; Eden, North Carolina; Fieldale, Virginia; Phenix City, Alabama; and Columbus, Georgia, copies of the attached notice marked ''Appendix.''[9] Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's vice president for human resources, Ozzie Raines, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(q) Publish the attached notice marked ''Appendix'' in the Respondent's internal newsletter.

(r) Mail copies of the notice to all its present employees and to all employees on the Respondent's payroll since April 29, 1991, when the Respondent began its unlawful conduct.

(s) Post, mail, and publish in the same manner a Spanish language translation of the Board notice. All such notices, whether mailed, posted, or published, are to be signed personally by the Respondent's vice president for human resources, Ozzie Raines.

(t) Convene all employees during working time at the Respondent's North Carolina, Virginia, Alabama, and Georgia facilities, by shifts, departments, or otherwise, and have Ozzie Raines read the notice to employees, or at Ozzie Raines' option, permit a Board agent to read the notice. If Ozzie Raines chooses to have a Board agent read the notice, he shall be present while the notice is read. In either event, the notice must also be read in Spanish.

(u) Publish in local newspapers of general circulation a copy of the attached notice marked ''Appendix'' two times a week for a period of 4 weeks and publish in all local Spanish newspapers a copy of the Spanish language translation of the notice; if, however, there exists no local Spanish publication in an area covered by one of the local newspapers, then a Spanish translation of the notice shall also be published in the local newspaper.

(v) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[Direction of Second Election omitted from publication.]

MEMBER STEPHENS, concurring and dissenting in part.

1. I agree that the number and pervasiveness of the Respondent's unfair labor practices warrant remedies beyond those of the ordinary case, and I part company from my colleagues on only three aspects of the remedy. First, in view of the other remedies being granted to dispel the atmosphere created by the unfair labor practices at the plants in which the representation election was held, I am not certain that the second election needs to be conducted offsite. I would, however, allow the Regional Director the discretion to order this when he schedules the election if this measure seems warranted under the circumstances at that time.

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

Second, in view of the fact that the violations at the union-represented plants consisted only of the discriminatory withholding of the wage increase and some statements about it—i.e., the great bulk of the violations occurred only in the nonunion plants in which the election was held—I would not enlarge the remedy in the union-represented plants beyond requiring that the Respondent cease and desist from the violations found there, that it reimburse employees for the unlawfully withheld wage increase, and that it post a notice regarding the violations committed in those plants. Reading of the notice in the nonunion plants is warranted because they were the site of the great number of unfair labor practices designed to crush the organizing campaign there. In my view this distinction is consistent with our obligation to see that a remedy is ''tailored to the unfair labor practice it is intended to redress.'' *Sure-Tan, Inc.*, 467 U.S. 883, 900 (1984).

Third, because there was no repeated or pervasive personal involvement by Vice President Ozzie Raines in the various unfair labor practices found here, I would not require his presence at the reading of the notice. Compare *Three Sisters Sportswear*, 312 NLRB 853 (1993) (presence of Beirel Jacobowitz required because of his involvement in many serious violations) with *Monfort of Colorado*, 298 NLRB 73, 86 fn. 47 (1990) (presence of Kenneth Monfort not required because he was involved in only two of the many violations). Because his commission of unfair labor practices in the sight of employees was limited to some statements in a videotaped campaign speech (which, as indicated below, I might not have found unlawful in a different context), I would not find his conduct equivalent to that of officials in the rare cases in which the Board has required a reading of the notice by an official or in the official's presence. See, e.g., *Three Sisters Sportswear*, supra; *S. E. Nichols, Inc.*, 284 NLRB 556, 560, 596 (1987), modified in pertinent part 862 F.2d 952, 962 (2d Cir. 1988), cert. denied 490 U.S. 1108 (1989).

2. In finding that the Respondent, through its agents, interrogated employees in violation of Section 8(a)(1), I do not rely on the T-shirt incident involving employee Sylvia Crawford and supervisor Diane Hartis. Also, I would not adopt the judge's finding that the Respondent violated Section 8(a)(1) through Plant Manager Robert Freeland's statement that he would not have union supporters as his personal friends, although he would not hold grudges against them or discriminate against them.

I join in adopting the judge's other findings of independent 8(a)(1) violations, but I emphasize that, in adopting those findings with regard to bargaining-from-scratch statements and messages implying inevitability of strikes, I am influenced by the background against which they were made: a union organizing campaign in which management responded in part with numerous crude threats of retaliation against employees for supporting the Union and statements concerning a wage increase that suggested an intent to take a punitive approach in determining benefits for employees who insisted on choosing representation by a collective-bargaining representative. Were this a case in which, for example, the *only* statements at issue were those in Ozzie Raines' description of the collective-bargaining process in his videotaped preelection speech, I might well conclude that no unfair labor practice had been committed. See, e.g., *Mediplex of Danbury*, 314 NLRB 470, 471 (1994); *Harrison Steel Castings Co.*, 293 NLRB 1158, 1159 (1989), petition for rev. denied 923 F.2d 542 (7th Cir. 1991).

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid and protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT coercively interrogate employees concerning their union sympathies and activities.

WE WILL NOT threaten employees with discharge if they do not revoke their union authorization cards.

WE WILL NOT threaten employees with loss of benefits if they select the Union as their representative.

WE WILL NOT threaten employees with termination if they select the Union as their representative.

WE WILL NOT tell employees to resign because of their union activities or sympathies.

WE WILL NOT threaten employees with discharge if they meet with representatives of the National Labor Relations Board.

WE WILL NOT threaten employees with discharge for associating with known union supporters.

WE WILL NOT threaten employees with plant closure if they select the Union as their representative.

WE WILL NOT threaten Spanish-speaking employees with deportation or imprisonment if they sign union authorization cards.

WE WILL NOT threaten employees with unspecified reprisals for engaging in union activities.

WE WILL NOT threaten employees with unspecified reprisals if they select the Union as their representative.

WE WILL NOT order employees to wear antiunion T-shirts.

WE WILL NOT threaten to discharge employees because of their union activities.

WE WILL NOT threaten to suspend and otherwise discipline employees because of their union activities.

WE WILL NOT threaten employees with more stringent enforcement of rules if they select the Union as their representative.

WE WILL NOT tell employees that they were assigned additional work because of their union activities or sympathies.

WE WILL NOT make disparaging remarks about the Union in a context of other coercive statements.

WE WILL NOT engage in, and create the appearance of, surveillance of our employees' union activities.

WE WILL NOT threaten to watch employees more closely because of their union activities.

WE WILL NOT restrict the movement of union supporters within the plant because of their union activities, in order to restrict their access to other employees.

WE WILL NOT restrict prounion employees to their work areas, while simultaneously allowing antiunion employees to leave their work areas.

WE WILL NOT tell employees that bargaining will begin from scratch, in the context of other statements that benefits will be reduced.

WE WILL NOT tell employees that their selection of the Union would be futile.

WE WILL NOT promulgate or enforce a rule prohibiting employees from talking about the Union on the job, while permitting discussion of other subjects.

WE WILL NOT promulgate or enforce a rule prohibiting employees from engaging in union activities in nonwork areas during nonwork time.

WE WILL NOT poll employees regarding their support for the Union.

WE WILL NOT prohibit employees from having prounion literature in their possession or workplace while allowing employees to have antiunion literature.

WE WILL NOT allow antiunion employees to return late from lunch periods while prohibiting prounion employees from doing the same.

WE WILL NOT allow antiunion employees to distribute campaign literature on company time in violation of our rules, while prohibiting prounion employees from doing the same.

WE WILL NOT prohibit only prounion employees from distributing union literature during nonwork time in nonwork areas.

WE WILL NOT solicit, remedy, or promise to remedy, employee grievances in order to discourage employees' support of the Union.

WE WILL NOT tell prounion employees that they will no longer receive higher paid temporary assignments, because of their support of the Union.

WE WILL NOT promise employees unspecified benefits in order to induce them to withdraw their support of the Union.

WE WILL NOT solicit employees to withdraw affidavits submitted to the National Labor Relations Board.

WE WILL NOT instruct employees to remove union insignia.

WE WILL NOT allow employees to buy first-quality goods at a discount in order to discourage them from supporting the Union.

WE WILL NOT tell employees that their selection of the Union would inevitably lead to strikes, in the context of other unlawful statements.

WE WILL NOT tell union employees that, because of their support of the Union, they would receive a wage increase less than that granted to nonunion employees.

WE WILL NOT tell nonunion employees that they will receive a greater wage increase than the union employees.

WE WILL NOT threaten employees with discharge if they go on strike.

WE WILL NOT announce a new rule more stringently enforcing work rules, in retaliation for employees' union activity.

WE WILL NOT tell employees that a supervisor will no longer associate with them, or use them for translating activities, because of their union sympathies.

WE WILL NOT grant wage increases to nonunion employees and refuse to grant a comparable increase to union employees because of their support of the Union, and in violation of our duty to bargain in good faith with the Union.

WE WILL NOT discourage membership in Amalgamated Clothing and Textile Workers Union of America, AFL–CIO, or any other labor organization, by discharging, suspending, warning, or otherwise disciplining employees because of their union or other protected activity, or because they have given testimony before the Board, or discriminate against them in any other manner with respect to their hire, tenure of employment, or terms and conditions of employment.

WE WILL NOT in any other manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL offer Sylvia Walter, Alton W. Linton, Osborne Bennett, Wendy Ashcraft, Reginald Turner, Elboyd Deal, Charles Cordle, Ronald Pharr, Earl White, Roy Walters, Ronald Teeter, Susan Cavin, and Cathy Thompson immediate and full reinstatement to

their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and WE WILL make them whole for any loss of earnings and other benefits resulting from their discharge, less any net interim earnings, plus interest.

WE WILL make whole, with interest, Elboyd Deal and Alton W. Linton, for any loss of earnings and other benefits suffered as a result of the unlawful actions against them.

WE WILL reassign Robin Teal and Oreida Clarke to their former positions as temporary supervisor and translator, respectively, and make each of them whole for any loss of earnings and other benefits suffered as a result of the unlawful action against them.

WE WILL reassign Joanne Diggs to her former position as an instructor, and make her whole for any loss of earnings and other benefits suffered as a result of her assignment to the job of hemmer on about July 1, 1991.

WE WILL reassign Eldridge Henry to the same duties which he had prior to our discriminatory assignment of more onerous work to him.

WE WILL make whole our employees in the following plants: Eden, North Carolina; Fieldale, Virginia; Phenix City, Alabama; and Columbus, Georgia; by retroactively granting them a wage increase, effective September 9, 1991, with interest, equivalent to the increase which we then granted to our nonunion employees.

WE WILL remove from our files any reference to the unlawful discharges, suspensions, and warnings and notify the employees in writing that this has been done and that the unlawful actions will not be used against them in any way.

WE WILL rescind our unlawful rules prohibiting employees from talking about the Union on the job, while permitting discussion of other topics; prohibiting employees from engaging in union activities in nonwork areas during nonwork times; prohibiting employees from having union literature in their possession or at their workplace while allowing procompany employees to have antiunion literature; allowing procompany employees to return late after lunch periods while prohibiting prounion employees from doing the same; allowing procompany employees to distribute campaign literature on company time in violation of its rules, while prohibiting prounion employees from doing the same; prohibiting only prounion employees from distributing union literature during nonwork time in nonwork areas; and more stringently enforcing work rules in retaliation for the employees' union activities; and WE WILL publish notices to employees that such rules have been rescinded.

WE WILL supply the Union, upon request made within 1 year of the date of the Board's Decision and Order, the full names and addresses of all current unit employees employed in our nonunion plants in North Carolina.

WE WILL, on request, grant the Union and its representatives reasonable access to our bulletin boards and all places where notices to employees are customarily posted in our nonunion plants in North Carolina.

WE WILL, on request, grant the Union reasonable access to our nonunion North Carolina facilities in nonwork areas during employees' nonwork time.

WE WILL give the Union notice of, and equal time and facilities for the Union to respond to, any address made by us to the employees at our nonunion plants in North Carolina on the question of union representation.

WE WILL afford the Union the right to deliver a 30-minute speech to employees on working time prior to any Board election which may be scheduled involving employees at our North Carolina plants in which the Union is a participant in a time frame of not more than 10 working days before, but not less than 48 hours before, such election.

WE WILL, on request, bargain with the Union as the exclusive representative of employees in the following appropriate unit concerning terms and conditions of employment and, if any understanding is reached, embody the understanding in a signed agreement:

> All production and maintenance employees, excluding office clerical employees, guards, and supervisors as defined in the Act, employed in separate units at our plants located in Eden, North Carolina; Fieldale, Virginia; Phenix City, Alabama; and Columbus, Georgia.

FIELDCREST CANNON, INC.

Rosetta B. Lane, Esq. and *Jane P. North, Esq.*, for the General Counsel.

Charles P. Roberts III, Esq., Rudolfo Agraz, Esq., Thomas T. Hodges, Esq., and *Gregory P. McGuire, Esq. (Haynesworth, Baldwin, Johnson & Greaves)*, of Greensboro, North Carolina, for the Respondent Employer.

David M. Prouty, Esq., of New York, New York, for the Charging Party Petitioner.

DECISION

STATEMENT OF THE CASE

HOWARD I. GROSSMAN, Administrative Law Judge. Various charges and amended charges in the above-captioned cases were filed by the Amalgamated Clothing and Textile Workers Union, AFL–CIO (the Union or the Petitioner), the first one on July 1, 1991, and the last on June 24, 1992. After issuance of various complaints, a fifth order consolidating cases and a consolidated complaint (the complaint)

issued on February 27, 1992. Thereafter, subsequent to the filing of another charge, another complaint issued on June 29, 1992 (Case 11–CA–15006), and was consolidated with the other cases during a hearing then in progress. The complaint alleges that Fieldcrest Cannon, Inc. (Respondent or the Employer) committed various unfair labor practices, as described hereinafter. All dates are in 1991 unless otherwise indicated.

Pursuant to a stipulation, an election was conducted on August 20 and 21, among the Employer's production and maintenance employees in various plants located in Cabarrus and Rowan Counties, North Carolina. Out of approximately 6000 eligible voters, 3034 cast votes for and 3233 against the Petitioner. There were 538 challenged ballots, which were then determinative. Both the Petitioner and the Employer filed timely objections to the election.

I heard these cases on 36 hearing days, the first one in Kannapolis, North Carolina, on March 31, 1992, and the remainder in Concord, North Carolina, where the last hearing date was January 25, 1993.

On October 27, 1992, during the hearing, the Petitioner withdrew its challenges to various ballots, and the Regional Director for Region 11 issued a revised tally of ballots, showing 3053 ballots cast for and 3443 against the Petitioner, with 307 ballots still challenged. Accordingly, the challenged ballots were no longer determinative. The Employer thereupon withdrew its objections to the election.

Subsequent to the hearing, the General Counsel, the Respondent Employer, and the Union Petitioner submitted briefs. On the basis of the entire record, the briefs, and my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION AND THE UNION'S STATUS

The pleadings and evidence establish that Respondent is a Delaware corporation with plants located at Kannapolis, Eden, and Salisbury, North Carolina, Fieldale, Virginia, Phoenix City, Alabama, and Columbus, Georgia, where it is engaged in the manufacture and sale of textile products. During the 12 months preceding issuance of the complaint, a representative period, Respondent received goods and materials valued in excess of $50,000 at each of its plants listed above, from points outside the State in which each plant is located. During the same period of time, Respondent shipped from its Kannapolis, North Carolina plant, goods valued in excess of $50,000 to points outside the State of North Carolina. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

The pleadings also establish that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

The Alleged Violations of Section 8(a)(1)

Introduction

Section 14 of the complaint alleges numerous violations of Section 8(a)(1) of the Act. Some of these allegations list similar violations by different supervisors. Some of these alleged supervisory infractions are related to other conduct alleged elsewhere in the complaint as discriminatory, while other alleged supervisory actions are not so related. The General Counsel's, Respondent's, and the Union's evidence is scattered throughout more than 7800 pages of the transcript and numerous exhibits. The complaint is prolix and redundant—some of the allegations are similar to others.

There is no perfect way to present this mass of disputed evidence. I have concluded that the best way is to track the complaint's allegations. Although this may appear to be disconnected in the case of supervisors allegedly committing multiple violations, it consolidates all the evidence pertaining to each alleged violation, although by different supervisors. Accordingly, in this section of the decision, each subsection will have the same alphabetical designation as the suffix of the corresponding section of complaint paragraph 14, although it will be capitalized. Thus, complaint paragraph 14(a) is discussed in subsection A etc.

The supervisors by whom the alleged unfair labor practices were committed are listed in each subsection of this section of the this decision. Although Respondent's answer denies some of the job titles attributed by the complaint to these individuals, and questions the spelling of one name (Hartis is misspelled Hortis), it neither admits nor denies that they were supervisors within the meaning of the Act. I find that they were supervisors (National Labor Relations Board Rules and Regulations, Sec. 102.20). This finding is consistent with the testimonies of the individuals who testified.

A. *The Alleged Unlawful Interrogation*

Applicable Principles

In an early statement of the principles to be applied in such cases, the Board stated:

> In our view, the test is whether, under all the circumstances, the interrogation reasonably tends to restrain or interfere with the employees in the exercise of rights guaranteed by the Act. The fact that employees gave false answers when questioned, although relevant, is not controlling. The Respondent communicated its purpose in questioning the employees—a purpose which was legitimate in nature—to the employees and assured them that no reprisal would take place. Moreover, the questioning occurred in a background free of employer hostility to union organization. These circumstances convince us that the Respondent's interrogation did not reasonably lead the employees to believe that economic reprisal might be visited upon them by Respondent. [*Blue Flash Express*, 109 NLRB 591, 593 (1954).]

The Board distinguished its decision in *Blue Flash* from a contrary holding, in which the interrogation took place a week before a Board election, and the employer failed to give the employees any legitimate reason for the interrogation or assurances against reprisal (id.).

The Board reiterated this standard in *Rossmore House*, 269 NLRB 1176 (1984), where it rejected a per se approach to interrogation of open union adherents and concluded that the test was whether, under all of the circumstances, the interrogation reasonably tends to interfere with, restrain, or coerce, employees in the exercise of rights guaranteed by the Act

(id., 269 at 1177). The Board stated some of the factors to be considered:

> Some factors which may be considered in analyzing interrogations are: (1) the background; (2) the nature of the information sought; (3) the identify of the questioner; and (4) the place and method of interrogation. See *Bourne v. NLRB*, 332 F.2d 47 (2d Cir. 1964). These other relevant factors are not to be mechanically applied in each case. Rather, they represent some areas of inquiry that may be applied in applying the Blue Flash test of whether under all the circumstances the interrogation reasonably tends to restrain, coerce, or interfere with rights guaranteed by the Act. [Id., 269 NLRB at 1178 fn. 20.]

The Board has concluded that interrogation of a known union adherent's union sympathies was coercive. *Baptist Medical System*, 288 NLRB 882 (1988). In *Sunnyvale Medical Clinic*, 277 NLRB 1217 (1985), the Board applied the same test to interrogation of employees who were not open union adherents. The Court of Appeals for the Fifth Circuit recently affirmed a Board finding of coercive interrogation because of the employer's promulgation of an illegal rule, and a history of attempting to engage in the same practice in the past. *NLRB v. Brookshire Grocery Co*., 919 F.2d 359 (5th Cir. 1991), enfg. in part 294 NLRB 462 (1989).[1]

1. Diana Hartis

a. *The facts*

Diane Hartis was a shift supervisor in the sheet fabrication department in one of Respondent's Kannapolis plants, and supervised about 65 employees. Although Hartis did not specify her own supervisors, other evidence of Respondent's supervisory hierarchy warrants an inference that there were several supervisors over her. Sylvia Crawford, a union activist, was assigned to that department.

Hartis passed out ''Just say No'' (procompany) T-shirts to employees in the period immediately prior to the election. Respondent contended that the shirts were given only to employees who asked for them. Crawford, while wearing union insignia, approached Hartis and asked for a company T-shirt, saying that she had changed her mind, and was for the Company. Hartis said, ''Fine,'' and gave Crawford a shirt.

Another employee then told Hartis that Crawford intended to put union slogans on the company T-shirt. Hartis went back to Crawford, and a conversation ensued. According to Crawford, Hartis said, ''If you search in your heart, will you please just give the shirt back.'' Crawford said that she intended to wear it, and Hartis responded that Crawford might put something on it. ''I don't want to be made a fool of.'' Crawford replied that some of the employees were changing the shirt to read ''Say No to Drugs,'' while others were changing it to read ''Say Yes'' (for the Union). Crawford told Hartis that if she, Crawford changed the slogan on the shirt, she would give it back to Hartis to wear. ''Please give it back,'' Hartis asked, and Crawford later put the shirt on Hartis' desk.

b. *Discussion and conclusions*

The first issue is whether Hartis' actions constituted interrogation. In *Tappan Co*., 254 NLRB 656 (1981), a supervisor walked through his department with procompany T-shirts over his arm. He contended that he offered shirts only to employees who asked for them. The Board concluded that the supervisor had engaged in ''a form of interrogation'' by walking through his department with an armful of antiunion T-shirts. This action ''required employees to make an open choice.'' The Board concluded that this conduct was coercive, and set aside an election (id.).[2]

Roth Crawford's and Hartis' accounts of the conversation in this case show that Hartis was still in doubt about Crawford's intentions. Hartis wanted to know whether the employee's report to her about Crawford was accurate. I conclude that Hartis' actions constituted interrogation as to whether Crawford intended to support the Union or the Company.

Respondent's desire to know Crawford's intentions was not a legitimate inquiry. It may be argued that Hartis wanted to avoid what she considered to be embarrassment in the event Crawford altered the language on the shirt. However, Crawford's intentions on this subject are unknown. Although Crawford recited to Hartis several types of alterations other employees had made, she promised that she would give the shirt back to Hartis in the event she made any changes. It is highly unlikely that Supervisor Hartis would have worn a prounion shirt, and there was therefore an element of bravado in Crawford's statement. However, the fact remains that Hartis had no way of knowing whether Crawford would renege on her promise to return the shirt if she changed the legend. Crawford in fact did return it, apparently unmarked. The end result is the same as that indicated above—Hartis wanted to know whether Crawford in fact had a change of heart about supporting the Union.

The interrogation was conducted by a midlevel supervisor of 65 employees in the plant shortly before a Board election. Hartis advanced no assurance against reprisals in the event Crawford continued to support the Union. The entire record in this case shows massive interference by Respondent with employee rights, some by Hartis herself, and the discriminatory discharges of union adherents. For the reasons advanced by the Board and the Court of Appeals for the Fifth Circuit in the cases cited above, I conclude that Hartis coercively interrogated Crawford about her union sentiments, in violation of Section 8(a)(1).

[1] Citing *Bourne*, supra the court listed eight factors to be considered in determing whether interrogation has been coercive: (1) the history of the employer's attitude toward its employees; (2) the nature of the information sought or related; (3) the rank of the questioner in the employer's hierarchy; (4) the place and manner of the conversation; (5) the truthfulness of the employee's response; (6) whether the employer had a valid purpose in obtaining the information sought; (7) whether a valid purpose, if existent, was communicated to the employee; and (8) whether the employer assured the employee that no reprisals would be forthcoming. Although some of these factors were not satisfied, the court in *NLRB v. Brookshire Grocery*, supra, agreed with the Board that the interrogation had been coercive.

[2] Accord: *Pillowtex Corp*., 234 NLRB 460 (1978); *Houston Coca-Cola Bottling Co*., 256 NLRB 520 (1981) (''Vote No'' buttons).

2. Reganna Earwood

a. *The General Counsel's evidence*

Reganna Earwood was a supervisor of about 35 employees in a towel packaging department in one of Respondent's Kannapolis plants. Earwood's supervisor was Ruth Blalock,[3] and the latter had other supervision over her.

Reginald Turner had been an employee of the Company since March 1990, and his job included loading towels onto trucks and taking them to another section. Turner was handed some union leaflets at the gate in early June 1991, at the beginning of the union campaign, and thereafter passed out leaflets himself and attended union meetings. He was given ''a badge to wear.[4]

A short time later, Turner entered a hospital for treatment of alcohol dependency, with the Company's concurrence. He stayed there about a month, and returned to work about 2 weeks after his release, in early August. Turner testified about a number of conversations thereafter, which Respondent's witnesses denied.

According to Turner, he was delivering towels to another section where Dorothy Brooks was the supervisor. Turner testified that Brooks lived across the street from him. She approached him in her section and asked whether anybody had talked to him about being for or against the Union. Brooks also asked whether Turner had seen any films about the Union. Turner responded that he had not seen any films, but that he was already ''for the Union.'' Brooks replied that the Union would not benefit him, that she considered him to be a ''godson'' because of his requests to her for advice, but that she could not assist him further. A few days later, Turner started seeing some films at the plant.

Turner testified that Supervisors Earwood and Blalock called him into the office a short time later. They stated that Brooks had advised them that Turner was for the Union. They showed him a little postcard which, according to Tuner, ''had on it that if you are not for the Union you can change your mind.'' Earwood and Blalock advised Turner that he had ''two points against him.[5] and if he did not sign the card he would be ''right out the door now. Turner believed that his job was being threatened. He signed the card and gave it to the supervisors. They said he was doing ''the right thing.'' Earwood gave him a ''Vote-No'' (company) T-shirt, and told him to wear it everyday. At about this time, Brooks said that she would wash it for him every night.

Turner testified about a conversation he had a week before the election with ''a dude name Smiley.'' This was a nickname for Walter Waller, another employee. Turner was wearing the Vote-No T-shirt at the time. Waller asked Turner how he was going to vote. The latter replied that he was going to vote for the Union, and that he was wearing the company T-shirt ''to keep everybody off [his] butt.'' ''If you wear this shirt,'' Turner told Waller, ''they won't harass you.''

An hour or two later, Reganna Earwood approached Turner and said that she heard he was voting for the Union. Earwood said that it was not a good idea, and ''turned red.'' According to Turner, Earwood and Blalock came back the next day ''and asked—that they had heard that's how I was going to vote and I told them 'yeah' because that was how I was going to vote. and then they both got mad.

Turner was discharged a short time later, as described hereinafter.

b. *Respondent's evidence*

Dorothy Brooks agreed that she had a conversation about the Union with Turner after his return from an extended absence, but gave a different version of it. According to Brooks, Turner asked her whether he could talk to a supervisor if the Union came in. Brooks replied that Turner would have to talk to his union representative. Turner told Brooks that his brother favored the Union, but that he was against it. Brooks denied that Turner told her that he was for the Union, and asserted that she believed he was for the Company. Brooks denied that Turner was her godson, denied that he ever asked her for advice, and denied offering to wash his T-shirt. Brooks agreed that she had cards on her desk which employees could sign requesting return of union authorization cards. These cards were available for employees.

Reganna Earwood asserted that Turner asked her for a T-shirt, that she gave him one, and that he wore it every day. She denied that Walter Waller or anybody told her that Turner was going to vote for the Union, or that he was wearing a company shirt to avoid being harassed. Earwood denied telling him to sign a union withdrawal card, or that he had two points against him. She acknowledged that Waller roomed and boarded with her, but denied that she ever discussed company business outside the plant.

Ruth Blalock in essence repeated Earwood's denials. She testified that Respondent would do anything to keep the Union out, that it was the supervisors' job to assist the Company in this task, and that she had union withdrawal cards. She obtained these instructions at management meetings.

Walter Waller denied having a conversation with Turner in which he asked the latter how he was going to vote, and denied telling Supervisor Earwood that Turner supported the Union. Waller acknowledged that he had ''reported'' on other employees in the past, and the record shows that he played a part in the allegedly discriminatory discharge of another employee, as described hereinafter. Waller became a temporary supervisor with increased pay in February 1992 about a month before this proceeding began.

c. *Factual and legal analysis*

Brooks corroborated Turner's testimony that they had a conversation about the Union shortly after Turner returned from the hospital. Brooks' version of that conversation—that Turner asked her whether he could talk to a supervisor if the Union came in, is inconsistent with Brooks' testimony that Turner never asked her for advice. Turner was a union activist and there is nothing in his testimony or demeanor which suggests that he would ask a supervisor about his rights if the Union came in. He was a more truthful witness than Brooks, and I credit his testimony that she approached him, and asked whether anybody had talked to him about the

[3] I conclude that Blalock was also a supervisor.

[4] Turner stated that he became involved in the union campaign ''a little before June.'' This was unlikely, since other evidence shows that the campaign did not start until June.

[5] Respondent had a system of discipline based on ''points,'' and three points warranted dismissal.

Union and whether he had seen films. He replied that he was already for the Union. I also credit his testimony that she said he was her neighbor and was like a godson, but that she could not help him any more.

The General Counsel contends that Brooks' inquiry to Turner. whether anybody had talked to him about being for or against the Union, constituted unlawful interrogation.[6] The subsection of the complaint alleging unlawful interrogation does not list Brooks' name.[7] However, the conversation between Turner and Brooks was thoroughly litigated, and I conclude that Brooks' question violated Section 8(a)(1).

Brooks' and Blalock's testimony establish that Respondent in fact had cards on which an employee could request withdrawal of a union authorization card. This corroborates Turner's testimony about being asked by Earwood and Blalock to sign such a card. Respondent argues that there is no evidence that Turner signed a union authorization card, or, if he did that the supervisors knew it.[8] However, if Brooks told Earwood and Blalock that Turner supported the Union—and Turner testified that Earwood and Blalock affirmed such a report—it would be natural for them to assume that he had signed a card. Turner's description does not mention withdrawal of an authorization card—the supervisors asked him to sign a card that he was ''not for the Union'' and wanted to ''change his mind.'' None of the witnesses on this issue was sophisticated in labor law. The supervisors may well have believed that signing a withdrawal card would be significant. In any event, Turner's testimony establishes beyond doubt that he had knowledge of Respondent's possession of withdrawal cards. There is no evidence to show how he acquired such knowledge except his asserted conversation with Earwood and Blalock.

The supervisors were told by management to assist in keeping the Union out, and I conclude that Earwood and Blalock were biased witness. I credit Turner's testimony, i.e., that Earwood and Blalock told him that he had ''2 points'' against him and that Brooks reported that he supported the Union. They also directed him to wear a company T-shirt every day, and told him that he would be ''right out the door now'' if he did not sign a union withdrawal card.

Turner was more truthful than Waller, who impressed me as a witness who would testify to almost anything at his Employer's behest. I credit Turner's testimony that, about a week before the election, Waller asked him how he was going to vote. Turner replied that he was going to vote for the Union, and he wore a company T-shirt to avoid harassment from supervisors. I also credit Turner's testimony that, an hour or two later, Earwood came to his work station, and that Earwood and Blalock come the next day. I interpret his testimony, quoted above, as showing that they asked him whether he was going to vote for the Union, and that he answered affirmatively.

This interrogation took place in the plant shortly before a Board election. It was conducted by a midlevel supervisor, and the supervisor above her. The subject of the interrogation—Turner's intentions in the forthcoming election—was not a legitimate inquiry. No assurances were given Turner against reprisal—in fact, he was discharged a short time later, as described hereinafter. This interrogation took place in the midst of Respondent's widespread violations of the Act. I conclude that the inquiry was coercive and violated Section 8(a)(1).

3. James O'Kelly

a. *The facts*

James O'Kelly was a shift supervisor in the towel distribution department of one of Respondent's Kannapolis plants. An employee was injured in that department during the union campaign, and an article about the accident appeared in early August 1991 in a newsletter published by the Union, ''Voices of the Mill.'' Elboyd Deal was an employee in the department, and had known O'Kelly for many years. The two frequently engaged in long, controversial discussions.

Deal handed out copies of the newsletter at the plant gate on about August 1 before going to work. He testified that O'Kelly approached him and said, ''There is an article on the front page of the Union letter that I think you wrote.'' He asked Deal why the latter ''didn't have the guts to sign it.'' Deal denied writing the letter, according to his testimony. He affirmed that Department Superintendent Kenny Brandon later said that the article was a pack of lies, that there were untruths in it, and that it was a bad reflection on Brandon's department. Deal again denied writing it.

O'Kelly testified that Deal told him several days before the appearance of the newsletter that there would be something interesting in it. The supervisor stated that he believed Deal had written the article, but denied that he ''accuse[d]'' him of doing so. I credit Deal's testimony that O'Kelly made the statements attributed to him by Deal.

b. *Discussion and conclusion*

Respondent argues that Deal had already indicated to O'Kelly Deal's knowledge of what would be contained in the article, and, accordingly, that O'Kelly was only acting in response to information provided by Deal.[9] However, Deal had not informed O'Kelly that he had written an article, but merely that one was appearing which would be of interest to O'Kelly. This did not reveal authorship of the article. Although O'Kelly's comment to Deal—''I think you wrote it''—is in statement form, in fact it was an inquiry into the authorship of the article. Correctly interpreting this statement as a question, Deal denied it. O'Kelly's statement about the author lacking the ''guts'' to sign the article was another question about the identity of the author.

The question of whether Deal was the author of an article about the Company in a union newsletter was not a legitimate inquiry. There is no reason to believe that Deal's denial was untruthful. As in the other interrogations discussed above, this one took place during a union campaign shortly before a Board election. Deal was not given any assurance against reprisal, and, in fact, was discharged a short time later. I conclude that this interrogation was coercive and violative of Section 8(a)(1).

[6] G.C. Br. 96 fn. 34.
[7] G.C. Exh. 1(kkk), par. 14(a).
[8] R. Br. 435.
[9] R. Br. 11.

4. Ted Godfrey

a. *The facts*

Ted Godfrey was a midlevel supervisor in a towel bleachery department in one of Respondent's plants in Kannapolis. Alton W. Linton was employed in that department.

On June 12, Linton obtained a union card at the plant gate. He brought it in to his work station, signed it, and left it there. Godfrey observed it while standing beside Linton. A few days later, Godfrey asked Linton what he thought about the Union. Linton replied that he thought it was a good thing. Godfrey stated that he was against the Union.

Linton testified that Godfrey told him that there would be stricter enforcement of the rules if the Union came in. On cross-examination, Linton agreed that his pretrial affidavit attributed to Godfrey the statement that ''[w]e would have to follow the rules and there would be no breaking of the rules; that they would be enforced.'' After acknowledging the absence of ''stricter'' in his affidavit, Linton reaffirmed: ''The Board agent just left that part out when he was typing, but Ted Godfrey himself said there would be stricter enforcement of the rules.'' Godfrey did not testify, and I credit Linton. Godfrey also said that the employees would have to deal with the Union rather than Godfrey (''good ole Ted''), and that the union people were ''trouble makers'' who would cause strikes and pit one employee against another. Godfrey said that he was a ''loner,'' and did not want the Union telling him how to run his job.

Godfrey offered no assurances to Linton that his support of the Union would not result in reprisals. Linton was discharged a short time later, as described hereinafter.

b. *Discussion and conclusion*

Godfrey's statements to Linton clearly conveyed his and the Respondent's antiunion animus. For this reason, his question as to what Linton thought about the Union was more than a casual inquiry. Respondent started committing other acts of interference with its employees' rights at about the same time as Godfrey's questions, and these soon developed into the numerous instances detailed in this decision. I conclude that there was no legitimate reason for Godfrey's question, that it was coercive for the reasons stated above, and that it violated Section 8(a)(1).

5. Percy Smith

a. *The facts*

Percy Smith was a shift supervisor over about 34 employees in the weaving room of one of Respondent's Kannapolis plants. Smith had several supervisors above him.

The allegation of interrogation involves employee Timothy Honeycutt, a loom fixer, and is related to the alleged unlawful discharge of another employee, Ronald Pharr, on or about August 14.[10]

Honeycutt was a union activist. He and Supervisor Smith agreed that the two of them had a conversation together in the plant during the incident involving Pharr. According to Honeycutt, Smith put his finger in Honeycutt's face during this discussion. The disputed issue is whether Honeycutt had a conversation with Smith in the latter's office a few minutes later.

Honeycutt testified without contradiction that, about a week before, he had a conversation with Smith's nephew, in which the latter expressed complaints about his uncle and gave his reason for leaving Respondent's employment. Honeycutt told the nephew that he could file charges against Smith. On August 14, according to Honeycutt, he went to Smith's office after the Pharr incident and asked: ''What have I done to cross you?'' Smith replied that he had heard that Honeycutt tried to get Smith's nephew to file charges against his uncle.

Honeycutt also testified that Smith told him that another employee had reported that Honeycutt had been off his job, and that Smith did not want Honeycutt off his job again or passing out union literature in the smoker. Honeycutt replied that he thought that the smoker was a break area. He further testified that his job required him to take parts to the machine shop, and that no such restrictive order had previously been imposed on him.

Smith testified that his nephew had worked under Smith's supervision at the plant, but had ''jumped the fence,'' or quit, prior to the election. Asked whether he had a conversation with Honeycutt about his nephew, Smith replied: ''No. Not about I mean, I talk to all my loom fixers about things, but not about this.''

Smith denied telling Honeycutt to stay on his job at that time. Asked whether he had ever done so, Smith replied, ''No, not specifically, no.''

b. *Factual analysis and conclusion*

The background facts regarding Smith's nephew are undisputed, as is the fact that a conversation with Honeycutt (and other employees) concerning Pharr took place in the plant. Honeycutt's testimony was more explicit than Smith's denials, and he was a more truthful witness. I credit his account of this aspect of his conversation with Smith in the latter's office on August 14.[11] I conclude that Smith's statement about Honeycutt's conversation with Smith's nephew, about the latter's rights under the Act, was an inquiry, and constituted an unfair labor practice under Section 8(a)(1).

6. Carl (Bud) Milstead

a. *The facts*

Carl (Bud) Milstead was a shift supervisor over about 31 employees in a towel cutting department at one of Respondent's Kannapolis plants. He had several supervisors over him.

Milstead acknowledged that he handed out procompany literature and Vote No T-shirts to employees during the campaign. He contended that he gave the shirts only to employees who asked for them. However, Angela Coleman, a current employee still working under Milstead's direct supervision, testified that she saw Milstead give Vote-No T-shirts in mid-August to five employees in the cutting room where she worked. Coleman named the employees. She did not hear Milstead say anything to the employees when he gave them the shirts. However, one of them came to Coleman

[10] The Pharr allegation is discussed hereinafter.

[11] Other aspects of this conversation are detailed infra.

three or four times, asked questions about the Union and requested a union ''book'' from her. ''Milstead would tell him one thing and I would tell him another.'' Coleman concluded that this employee was undecided.

b. *Factual and legal analysis*

In *Tappan Co*., supra, the employer made the same defense. ''[The supervisor] also testified that at one point he gave out all the T-shirts he was carrying but maintained that he gave shirts only to employees who had requested them.'' 254 NLRB 656. Milstead did not specifically affirm that the five employees named by Coleman had previously requested T-shirts. The testimony of Coleman, a current employee, is entitled to considerable weight.[12]

I conclude that Milstead violated Section 8(a)(1) by his offering procompany T-shirts to employees during the campaign, thus compelling them to indicate their choices. *Tappan Co*., supra, *Pillowtex Corp*., supra.

7. James Allen

a. *The facts*

James Allen was a shift supervisor over about 45 employees in a packaging department at one of Respondent's Kannapolis plants. Eric Strickland, a current employee, was assigned to that department. He testified that he heard Supervisor Allen initiate a conversation with employee Alfred Wilson in mid-August. The supervisor asked Wilson whether he wanted a procompany T-shirt, and whether he would wear it. Strickland stated that he heard ''part'' of the conversation. Allen denied asking Wilson whether he wanted a company shirt, and testified in general that he only offered shirts to employees who asked for them.

b. *Factual and legal analysis*

I credit Strickland's testimony that Allen asked Wilson whether he wanted a company T-shirt. Strickland was a truthful witness, and his status as a company employee at the time of his testimony makes it unlikely that he testified against his Employer's interest.[13]

Respondent argues that giving a procompany T-shirt ''only to them who first request them is clearly lawful,'' citing *Phillips Industries*, 295 NLRB 717, 733 (1989).[14] In that case, however, the administrative law judge found that the supervisor distributed T-shirts to employees who asked for them, and that the General Counsel had ''abandoned'' the allegation. Respondent also argues that Strickland overheard only part of the conversation between Allen and Wilson.[15] However, Strickland did overhear Allen asking Wilson whether he wanted a company T-shirt, and this is sufficient to negate Respondent's position that Wilson ''first'' asked for one. On the authority cited above, I conclude that Respondent unlawfully interrogated Wilson about his union sympathies, in violation of Section 8(a)(1).

8. Jean Wike and Lonnie Vanhoy

The General offered no evidence in support of the allegations pertaining to Jean Wike and Lonnie Vanhoy. In her brief, counsel for the General Counsel moves to substitute ''Gene Barringer'' for ''Jean Wike.'' (G.C. Br. 66 fn. 24.) This would be contrary to the Board's rules, and I deny the motion. I recommend dismissal of both allegations.

B. *The Alleged Threat of Discharge if a Union Withdrawal Card Was Not Signed*

The complaint alleges that Supervisor Ruth Blalock, in early August, threatened an employee with loss of his job unless he revoked his union authorization card.[16] I have found above that Supervisor Ruth Blalock, together with Supervisor Reganna Earwood, in early August told employee Reginald Turner that he would be ''out the door now'' if he did not sign a card authorizing withdrawal of his support of the Union. This was obviously a coercive statement violative of Turner's statutory right to support the Union, and transgressed Section 8(a)(1).

C. *The Alleged Threatened Loss of Benefits*

The complaint alleges that five supervisors threatened employees with loss of benefits if they selected the Union.

1. Mike Bumgarner

a. *The facts*

Mike Bumgarner was a supervisor in a spinning department at one of Respondent's Kannapolis plants.[17] Sylvia Walter[18] was a probationary employee in Bumgarner's department, and is an alleged discriminatee, as set forth hereinafter.

Walter testified that, on a date she could not recall, Bumgarner told her in his office that, during bargaining, the Union would have to give something up to get something.

Walter was asked on cross-examination whether Bumgarner merely said that bargaining was a ''trading process,'' and that ''you sometimes had to give up something to get something.'' She replied: ''He told me that we *would* lose something to get something.'' (Emphasis added.)

Bumgarner testified that he had a conversation about bargaining with Walter. He stated: ''I told her that it could be that everything would be laid out on the table if it was to happen. And, that you *might* have to give up something to gain something.'' (Emphasis added.)

b. *Factual and legal discussion*

Walter impressed me as a more truthful witness than Bumgarner. Based on that fact, and her repetition of her testimony on cross-examination, I credit her version of what Bumgarner said.

The legal analysis of these facts is given hereinafter.

[12] The Board's position is that it is unlikely that a current employee will testify falsely against his employer. *Soltech, Inc*., 306 NLRB 269, 271 (1992).

[13] Id.

[14] R. Br. 18.

[15] Id.

[16] G.C. Exh. 1 (kkk), par. 14(b).

[17] Although Bumgarner contended that he was an ''acting'' supervisor during the union campaign, I conclude on the basis of the pleadings that he was a supervisor within the meaning of the Act.

[18] Walter was married subsequent to the events discussed herein, and her last name was Austin at the time of the hearing. I shall refer to her by her name at the time of the events being litigated.

2. Windy Black

a. *The facts*

Windy Black was a supervisor in the warping department in one of Respondent's Kannapolis mills. Sandra Greene was an employee in that department, and was still employed by Respondent at the time of her testimony. Greene was a union activist. She distributed leaflets, participated in a press conference, and her picture appeared in a newspaper article about the Union.

Green testified that she had a conversation with Black on June 12. Greene was walking from one department back to her work station, and Black started walking with her. Black said that ''it was really sad that the Union came to the mill when they did because we were due to get a raise in August and now we wouldn't.'' Greene asked the reason, and Black said that it would be against the law, like a ''bribe.'' Black also said that if the Union came in, she wouldn't be able to tell employees what to do, and she could not sit with employees and socialize during break periods.

Black agreed that she had a conversation with Greene about the Union in June. According to the supervisor, Greene came to her office. She was ''crying'' and ''confused'' about whether to support the Union. The two of them discussed various subjects pertaining to this issue. However, Black denied saying that a raise scheduled for August would be delayed because of the Union, and denied knowing that any such raise was planned.

b. *Factual and legal discussion*

The employees in Kannapolis in fact did receive a pay raise in September.[19] Greene was a more truthful witness than Black. Further, she was a current employee at the time of her testimony, and, for that reason, it is unlikely that her testimony was false. I credit Greene's testimony that Black told her that the employees were due to get a raise in August, but would not receive it because the Union had come to the plant.

This statement indicated to Greene that a change had been made in Respondent's intentions because of the union campaign. As the Court of Appeals for the First Circuit has stated in a similar factual situation:

> A clear impression was publicly conveyed to all employees that a wage increase was imminent. . . . In light of the foregoing, we sustain the Administrative Law Judge's conclusion that respondent's statement that he was withholding the promised increase because ''the union was around'' was an attempt to blame the union for the withholding, and amounted to a separate violation of [S]ection 8(a)(1) (authority cited). [*NLRB v. Otis Hospital*, 545 F.2d 252 (1st Cir. 1976).][20]

I therefore conclude that Black's statement was violative of Section 8(a)(1).

3. Perry Harkey

a. *The evidence*

Perry Harkey was a shift supervisor in the promotional set department of one of Respondent's Kannapolis plants. Tony Bumgarner, a union activist, was an employee in that department. Bumgarner testified that he had a conversation with Harkey in June. Bumgarner initiated the conversation, and asked Harkey what ''we,'' i.e., the employees, could lose if the Union came in and went to the bargaining table. According to Bumgarner, Harkey replied that the employees could lose everything and start from nothing.

Harkey testified that Bumgarner asked him what the Union was all about, and ''what about bargaining.'' Harkey replied that they were going to put everything on the table, and take it from there. When Bumgarner asked for an explanation, Harkey replied that, in his opinion, the Union would be willing to give up something, such as a paid holiday, in order to get checkoff. Harkey denied saying that the employees could lose everything if they went to the bargaining table. Instead, he averred, he told Bumgarner that the employees could lose more than they gained.

b. *Factual analysis*

Bumgarner had better recall of this conversation, and I credit his version of it. Legal analysis is set forth in section X, infra.

4. Jim Perkins

Jim Perkins was the plant manager of the washcloth fabrication department. He had an extended conversation on August 19 with Patricia Boone, a union activist. According to Boone, Perkins said that when the Union and the Company started bargaining, they would start from scratch, and that the employees would ''probably'' lose the benefits which they had. On cross-examination, Boone affirmed that Perkins said that the employees ''could'' lose their benefits, and ''may'' not get the same benefits which they currently enjoyed. Perkins testified that he said that everything would be put on the table, and nothing would be left out. He did not recall using the term ''bargaining from scratch.''

Factual analysis

I credit Boone's testimony. Legal discussion is set forth in section II,X, infra.

5. Raymond Ross

The General Counsel did not elicit any evidence that Raymond Ross committed a violation alleged in this section of the complaint. Accordingly, I shall recommend that the allegation be dismissed.

D. *The Alleged Threats of Termination if the Employees Selected the Union*

1. Chris Wellman

Chris Wellman was a foreman in the towel printing department of one of Respondent's Kannapolis plants. Wendy Ashcraft was employed in that department and was a union activist.

[19] The September pay raise forms the basis of another allegation of the complaint. Several of Respondent's plants in other locations were represented by the Union. The complaint alleges that Respondent violated the Act by not offering these unionized employees the same wage increase it gave to employee in its nonunion plants.

[20] Accord: *NLRB. v. Dothan Eagle, Inc*., 434 F.2d 93 (5th Cir. 1970); *Kut Rate Kid & Shop Kwick*, 246 NLRB 106, 118 (1979).

Ashcraft testified that she and Wellman talked about family matters on occasion. On August 14, he asked her how long she planned to remain in Respondent's employment. Ashcraft replied that she was gong to have many job opportunities, and therefore really did not know how long she would be with the Company. Ashcraft asked why Wellman wanted to know, and he replied that he was ''just curious.''

Respondent was involved in other activities concerning Ashcraft, which I find hereinafter were unlawful. She was discharged by Wellman 2 days after this conversation, a discharge which I find was discriminatorily motivated. However, despite these factors, I conclude that Wellman's question about how long Ashcraft intended to remain with Respondent was too ambiguous to form the basis of a violation of the Act. *Yaohan of California*, 280 NLRB 268, 276 (1986). Accordingly, I shall recommend that this allegation be dismissed.

2. Rod Purser

a. *The evidence*

Rod Purser was a supervisor in the towel sewing department where Eldridge Henry, a union activist, was employed. The complaint alleges unlawful threats by Purser in mid-July and early August.

Henry had a discussion about the Union with Purser on August 1, in which he told the supervisor that he did not think the Company had treated him fairly. According to Henry, Purser asked him why he did not ''hit the gate.''

Purser acknowledged having a conversation about the Union with Henry. According to Purser, Henry said that the employees needed a Union, that the Company had not treated him fairly, that he had previously worked at a unionized facility, and that it was a better place to work. Purser asked why Henry was no longer working there, and Henry replied that it had shut down. Purser denied tell Henry to ''hit the gate.''

b. *Factual and legal discussion*

I credit Henry's partially corroborated version of this conversation, and I find that Purser did tell him to ''hit the gate.'' The facts here are significantly different from those in the case of Chris Wellman and Wendy Ashcraft, supra. Here, the employee a union supporter, stated his dissatisfaction with the Company, and the supervisor asked why he did not ''hit the gate,'' i.e., quit. The Board has characterized statements of this nature as follows:

> Such remarks clearly convey to employees the threat that management considers engaging in union activities and continued employment essentially incompatible. They also convey to the employee the impression that his union activities are being kept under surveillance. They, thus, come within that interference and coercion proscribed by Section 8(a)(1). [*Padre Dodge*, 205 NLRB 252 (1973).][21]

I reach the same conclusion herein with respect to Purser's statement to Henry.

[21] Accord: *Heartland of Lansing Nursing Home*, 307 NLRB 152 (1992); *Interterm, Inc*., 235 NLRB 693, 697–698 (1978).

3. Zel Bellou

a. *The evidence*

Zel Bellou was a supervisor in the washcloth department in one of Respondent's Kannapolis plants. Benny McIntyre, a union activist was employed in that department. He had been previously been employed in another department where lint was prevalent, and had contracted ''brown lung'' disease. He was thereafter transferred to the washcloth department.

McIntyre testified that at the end of June, Bellou gave him a leaflet and asked why he became involved with the Union after all the Company had done for him by transferring him out of the department with lint. She added that the Union could not help McIntyre, and that all it would do would be to jeopardize his job.

Bellou testified that she did have a conversation with McIntyre about his health problems and that she said that the Company did not need a Union. Bellou denied asking McIntyre why he became involved with the Union, or saying that the Union would jeopardize his job.

b. *Factual and legal analysis*

Bellou corroborated McIntyre's testimony that they did have a conversation. McIntyre testified in greater detail, and his testimony, as a current employee, is entitled to considerable weight. I credit his averment that Bellou told him that the Union could jeopardize his job. This was the equivalent of telling him that he could be discharged because of his union activity. I conclude that Bellou's statement was coercive and violative of Section 8(a)(1). *Garman Construction Co*., 287 NLRB 88, 89 (1987).

4. Paul Yost

a. *The evidence*

Paul Yost was the department manager in the card department of one of Respondent's Kannapolis plants. Ronald Teeter was a can hauler in this department. The complaint states that the alleged unlawful threat of termination took place on August 7. On that date, Yost had a conversation with Teeter, in which he said that, if the employees selected the Union, one of Respondent's biggest customers, Wal-Mart, would no longer buy from the Company. Teeter responded that Wal-Mart bought from other plants of the Company which were unionized.

b. *Legal discussion*

The General Counsel argues that Yost did not cite any objective facts to support his statement[22] I conclude that the statement did not constitute a threat that Teeter would be terminated, whatever else is may have been, and I shall recommend dismissal of this allegation.

5. M. D. Ford

a. *The evidence*

M. D. Ford was the plant manager of one of Respondent's Kannapolis plants, and held various meetings with employ-

[22] G.C. Br. 184 fn. 84.

ees. After one of them, Sherry Smothers, a union activist, complained to Ford that the Company was disrespectful to its employees. Ford allegedly said that Smothers should find another job. Ford denied saying this.

b. *Factual and legal analysis*

I credit Smothers' testimony that Ford said she should find another job. The same factors are present here as in the case of Rod Purser and Eldridge Henry, supra, and I find that Ford's statement violated Section 8(a)(1) for the same reasons.

6. Robert Freeland

The evidence

Robert Freeland was the plant manager of one of Respondent's Kannapolis mills, and held several meetings with employees. At one of the, he showed a film involving a strike at another employer's plant. Subsequent to the meeting, Charlotte Hayes, a union activist, told Freeland that it was a shame that people had to go to that extent to get what they were entitled to. Hayes testified that Freeland replied that the employees could have gone elsewhere to work. Hayes then asked whether Freeland was saying that she, Hayes, should go somewhere else to work. Freeland replied that she should answer her own question. Freeland denied making the latter statement.

I credit Hayes' version of this conversation. Freeland's statement that the employees depicted in the film could have gone elsewhere to work refers to those employees, not those in Respondent's plant. His statement to Hayes—that she should answer the question herself as to whether she do the same—creates a close question of interpretation. I conclude that it was too ambiguous to form the basis of a violation, and shall recommend dismissal of this allegation.

7. Raymond Ross

The General Counsel did not elicit any evidence that Raymond Ross committed the violation alleged in this section of the complaint, and none of the briefs alludes to such violation. I shall recommend that the allegation be dismissed.

E. *The Alleged Advice to Resign Because of Union Activity*

Factual and legal conclusions

The complaint alleges that Supervisor James O'Kelly, in late June, advised an employee that he should resign because he engaged in union activity. The evidence in support of this allegation appears in the testimony of Elboyd Deal.

Deal was a longtime employee of the Company and had been supervised by O'Kelly for many years. There had been a prior union campaign in 1985, which Deal supported. Deal credibly testified on cross-examination that, during the prior campaign, O'Kelly told Deal that he, O'Kelly heard that Deal had made a ''passionate speech'' in favor of the Union. Deal and O'Kelly ate together frequently in the plant, and engaged in discussion of controversial subjects. According to Deal, these included the Union, the alleged absconding with the employees' pension fund by the Employer's owner, and other topics. O'Kelly agreed on cross-examination that he and Deal discussed controversial subjects, including the pension fund issue.

Deal testified that, on June 29, O'Kelly asked him whether he had considered quitting Respondent's employment and working for Phillip Morris, which was unionized and where Deal might find happiness. O'Kelly denied making the remark, but admitted asking Deal why he did not work for Phillip Morris. O'Kelly contended that he asked this question prior to the advent of the union campaign. Asked the date of this question, O'Kelly could not recall.

O'Kelly's testimony amounts to an admission that he made the statement attributed to him by Deal. I credit Deal's testimony that the statement was made on June 29, since his testimony was more detailed and he was a more truthful witness.

This statement was unlawful for the reasons set fort in *Padre Dodge*, supra.

F. *The Allegation that Respondent Threatened an Employee with Termination for Having Met with the National Labor Relations Board*

1. The evidence

Elboyd Deal was suspended in early May, and discharged on August 21, both of which actions are alleged to have been unlawful.[23] Deal testified without contradiction that he gave an affidavit to a Board agent on June 9. According to Deal, on the next day, June 10, O'Kelly told him that he knew that Deal had been to the Board. He told Deal that he, O'Kelly, had not been responsible for the prior suspension, but that the Company was going to ''come down harder'' on Deal and require O'Kelly to ''write [him] up for anything.'' O'Kelly told Deal that he had a right to go to the Board, but that it was his job he should worry about.

O'Kelly denied making these statements and denied knowing on June 10 that Deal had been to the Board or had submitted an affidavit. According to O'Kelly, he did not learn about this until Deal's termination.

2. Factual and legal discussion

Respondent argues that there is no way that O'Kelly could have known that Deal gave an affidavit to the Board.[24] However, Deal's appearance on the stand demonstrated that he is a very talkative individual, and the record is replete with evidence of Respondent's extensive investigation into its employees' union activities. Deal was an inherently more truthful witness than O'Kelly, and I credit his testimony. O'Kelly's statement that it was Deal's job which he should worry about was an obvious threat that Respondent would fire Deal for having met with the Board. In fact, this is one of the reasons for Deal's subsequent discharge, as I find hereinafter.[25] I conclude that O'Kelly's statement on June 10 violated Section 8(a)(1).

G. *Respondent's Alleged Threat of Discharge for Association with Known Union Supporters*

The complaint alleges that Supervisor James O'Kelly, on April 29, threatened an employee with discharge for associat-

[23] See sec. II,TT, alleged violations of Sec. 8(a)(3) and (4), infra.
[24] R. Br. 46.
[25] Fn. 23, supra.

ing with known union supporters. Deal testified that O'Kelly asked him on April 29 what he had done over the weekend. Deal replied that he had lunch with another employee, Roy Sherrill. According to Deal, O'Kelly then stated:

> Elboyd, didn't I tell you that Roy Sherrill wears his Union badge to work and that this is a bad reflection on me? The Company does not like this type of behavior here in the plant. Elboyd, if I didn't like you and didn't consider you my friend—we've been friends for 8 years—I wouldn't be telling you this information that might just save your job. Elboyd, if I were you and I like my job, I would steer away from people who so openly express their support of the Union.

Deal agreed that he did not know about the 1991 union campaign at the time of this conversation.

O'Kelly testified that he had seen Sherrill wearing a union badge, and almost totally corroborated Deal's testimony, except that he denied telling Deal not to associate with Sherrill. As O'Kelly's testimony establishes and Respondent acknowledges, ''it is clear that O'Kelly had known Sherrill for years, knew that he was a union supporter, had associated with Sherrill both at work and away from work, and knew Deal helped Sherrill with his taxes.[26]

Factual and legal discussion

Respondent argues that the alleged conversation on April 29, did not occur, because the 1991 union campaign did not start until June 12, and Deal had not heard about that campaign at the time of the asserted conversation.[27] Nonetheless, Deal had supported the Union with a ''passionate speech'' during the 1985 campaign, and O'Kelly knew it. O'Kelly also knew that Sherrill continued to support the Union and wore a union badge, and O'Kelly and Deal discussed the Union during conversations at the plant. The record evidence establishes Respondent's intense animus against the Union. In these circumstances, O'Kelly's alleged warning to Deal was not improbable, and Deal was a more believable witness than O'Kelly. I conclude that the latter's statement to him amounted to a threat of discharge if he continued to associate with a known union supporter, and was violative of Section 8(a)(1). *Outboard Marine Corp*., 307 NLRB 1333, 1360 (1992).

H. *The Alleged Threats of Plant Closure if the Employees Selected the Union*

1. James Allman

Graciela Whitley was born in Mexico and had lived in the United States for 23 years. She was employed by Respondent as a towel inspector in Kannapolis, where James Allman was her supervisor. Whitley also served as an interpreter in Kannapolis for the Company in conversations with its Mexican employees.

Whitley testified that, when the union campaign began, Allman told her not to ''sign papers for the Union.'' He also said that ''if the Union win, we have to move the Company to Mexico.'' Later, Whitley testified, Allman told her and other employees that the employees would have to pay dues, that the Company wanted to stay where it was, and did not want to move to Mexico.

Allman did not testify.

Factual and legal discussion

Respondent argues that Whitley's testimony was ''largely incomprehensible.[28] On the contrary, it is quite clear. At no time during direct or cross-examination did Respondent's counsel profess inability to understand Whitley. Counsel was provided with a pretrial affidavit from Whitley—in English.

I conclude that Allman's statement was coercive and violative of Section 8(a)(1) under applicable Board law.

2. Percy Smith

a. *The evidence*

Several witnesses testified about this allegation. Terros Brown, a current employee, testified that he and Ronald Pharr were in the canteen eating dinner on August 1. Supervisor Percy Smith and employee Johnny High were about 5 feet away, and High was arguing in favor of the Union. Brown affirmed that he overheard Smith say to High that ''we'll be in the unemployment line'' if the Union comes into the plant. Smith and High talked for 5 or 10 minutes, but this was all that Brown overheard.

Johnny High, a current employee, testified that he entered the canteen on August 1, and that Smith, Brown, and Pharr were talking about the Union. High became involved in the conversation ''later on'' and heard Smith say that rules would be more strictly enforced if the Union came in, and that ''we'd all be in the unemployment line.''

According to Ronald Pharr, an alleged discriminatee, he was talking to Brown, High, and employee David Aldridge about how things would change if the Union came in. Supervisor Smith walked into the canteen, and said that things would not change for the better, that the Company would have to sell its products at higher prices, and that ''we would probably all find ourselves in the unemployment line.''

Percy Smith testified and denied that he ever talked to employees about the Union ''in the canteen.'' He also stated that he did talk to employees about the Union ''on the job,'' if they asked him a question about it. As examples of the answers he gave, Smith affirmed that he told employees that the Union would take money out of their pay, but could not do so if they were not union members.

Asked whether he ever discussed what would happen if the Union came in, Smith answered that he entered the canteen one night, and that David Aldridge and Johnny High were arguing about the Union. Smith claimed that he heard Aldridge say to High that the Union would ''probably be out of business in the next couple of weeks'' if the Union came in. Smith told them to go back to their jobs, and they did so.

David Aldridge described himself as ''the biggest instigator against the Union.'' He had been on a company ''assistance program.'' Aldridge contended that he told employees that the Company would have to charge higher prices if the Union came in, and that the employees would be in the unemployment line. Asked how he obtained this information,

[26] R. Br. 48.
[27] Id.
[28] R. Br. 50.

Aldridge replied that he had worked for a union almost 30 years before. Smith entered the canteen during the discussion, and ''run us all out.''

b. *Factual and legal discussion*

It is clear that Smith, Brown, High, Pharr, and Aldridge were in the canteen one night, and that there was a discussion of the Union. It is also clear that somebody said that the Company would shut down, or that the employees would be in the unemployment lines, if the Union came into the plant. The issue is whether Supervisor Smith or employee David Aldridge made this statement.

The Respondent argues that the General Counsel's witnesses should not be credited, because of ''inconsistencies'' in their statements.[29]

Although there is some variation in the description of the individuals in the conversation, all of the General Counsel's witnesses agree that it was Supervisor Smith who made the statement. The testimonies of Aldridge and Smith have less credibility. Aldridge was admittedly biased—''the biggest instigator against the Union''—while High and Brown, on the other hand, were current employees at the time of the hearing, and it is unlikely that their testimony against the interests of their employer was false. Further, it is more likely that a supervisor rather than an employee would say that unionization raises production costs and would result in plant closure. I conclude that it was Smith who said that the plant would shut down and the employees would be in the unemployment lines if the Union came in. I further conclude that this was an unfair labor practice violative of Section 8(a)(1).

3. Terry Burris

a. *The evidence*

Drenia Smith was an order coordinator in the towel sewing department at the time of her testimony, and Terry Burris was her supervisor. She testified that, on June 18, Burris told her that he hated to see the Union come in, that friendships would be lost, that people would firebomb houses, and that there would be strikes and violence. If there was a picket line and an Oriental had to cross it, he would be beaten and would not understand the reason. Smith also testified that Burris said that the plant would close down, and that Respondent would not deal with the Union. She added that she did not believe that Respondent would close the plant because of the Union.

Burris testified and agreed that he had a conversation with Drenia Smith early in the campaign. He agreed that he told Smith that trouble seemed to follow unions, and that it was ''possible'' that he told her he had seen reports of firebombing and violence. He denied saying that Orientals would be beaten up crossing a picket line, or that the plant would close in the event of unionization.

b. *Factual and legal analysis*

Respondent argues that Drenia Smith was not credible because her testimony about Burris' statement on plant closing took place after her other testimony, and was elicited by ''prompting'' and ''leading.[30] This is only partially correct. Although Smith's testimony about Burris' plant closing remark is separate from her testimony about his other statements, it all took place during direct examination, and there is not a hint that it was elicited by leading questions.[31] Respondent also argues that Burris' statement about plant closure was not coercive, because Smith did not believe him.[32] However, it is well established that the test of interference, restraint, or coercion is not whether it succeeds or fails, but, rather, the objective standard of whether it tends to interfere with the free exercise of employee rights under the Act. *American Freightways Co.*, 124 NLRB 146, 147 (1959).

Smith was a current employee at the time of her testimony—a factor which enhances her credibility, and she was partially corroborated by Burris. I credit her testimony, and I find that Burris' statement violated Section 8(a)(1).

4. Robert Freeland

a. *The evidence*

As previously indicated, Plant Manager Robert Freeland made numerous captive audience speeches to employees during the union campaign. Sherry Anthony, a current employee, testified about statements made by Freeland during a speech in mid-August. He was talking about a contract which the Union had with another of Respondent's plants, and observed that the contract said the Company could close the plant if there was no work.

Freeland then said that the Company ''would shut the plant down because there wouldn't be any work available because they were not taking any checkoffs.''

Paula Brice, also a current employee, testified about a meeting in mid-August in which Freeland said that the Union would call a strike if it did not get the right to checkoff dues. And then, Freeland stated, the employees could ''all lose their jobs.'' ''It would be like Suzy Curtains, the company over there that went on strike and then they closed down.'' Brice testified that the Company showed a film about a company called ''Suzy Curtains.''

Freeland agreed that he told employees that, if the Union wanted to strike, there was nothing to prevent it. He also testified that he had worked at a unionized plant, M. Lowenstein (where he was a part of management), that there had been a strike, and that the plant had closed. However, Freeland contended, ''I never implied that the Union situation had anything to do with it [the closing]—it was economics.''

Personnel Manager Ron Lisenby was present at these meetings, and denied that Freeland told employees that the plant would be closed.

b. *Factual and legal analysis*

Respondent argues that Freeland was merely stating the Company's right, as stated in a collective-bargaining agree-

[29] R. Br. 53.

[30] R. Br. 55.

[31] The transcript reads in relevant part:

Q. Ms. Smith, in your conversation with Mr. Burris on June the 18th, you said that he was talking about the strikes that the oriental person would not know not to cross the picket line.

A. Yes. He also said that the plant would close down, that Fieldcrest would not deal with the Union, that they would close the plant.

[32] R. Br. 56.

ment at another plant, to close the Kannapolis plant if there was no work. This was merely a ''lawful explanation that economics dictated the plant's operations.[33]

The argument lacks merit. Freeland's asserted statement that there would not be any work because the Company would not accept checkoff clearly implies that the lack of work and consequent plant closure would be the result of the Union's demand for checkoff and the Company's rejection of that demand, i.e., the plant would be shut down if the employees selected the Union. This causal relationship is clearly set forth in Brice's testimony.

Freeland admitted telling employee that another company which had a union had closed. His own embellishment of this statement—that he had not ''implied'' that the union was the cause of the plant closure—is contrary to the natural tendency of such a remark to create an inference of a causal relationship in the minds of his listeners.

Respondent points to minor variations in the testimonies of Anthony and Brice. These do not detract from the trustworthiness of these witnesses, apparently truthful, who were testifying against their Employer's interest. I credit their testimony, and conclude that Freeland's statements were coercive and violative of Section 8(a)(1).

5. Howard Hall

a. *The evidence*

Brenda Lyles is a spinning operator at Respondent's plant 16 in China Grove, North Carolina, and her supervisor was Howard Hall. Lyles testified that the Company put a notice on the bulletin board which listed the ''paid holidays,'' and that July 4 was one of them.

According to Lyles, several employees were discussing holiday pay in the ''smoker'' in mid-June, and the question arose as to whether the Company would pay for the July 4 holiday in 1991.

Hall had been invited into the smoker by another employee on another issue, and was asked about the effective date of the July 4 holiday pay. Hall replied that the employees did not have to worry about it if they voted the Union in, because the plant would be closed. He stated that the Company had lost money for three quarters, and that profits would drop 25 percent if the Union was voted in. A superintendent went by at that time, and Lyles told Hall that the Company would make a profit if it would cut the superintendent's and the plant manager's salaries. Hall replied: ''You just don't go around cutting management's pay.''

Hall testified, and agreed that he was ''motioned'' into the smoker by employees. He stated that he could ''hardly remember the conversation,'' and did not remember any talk of holidays. All that Hall could remember is that the employees were talking about ''profits,'' and he said that they had to be concerned with profits. Hall agreed that the discussion ''was all about the Union,'' but could not remember saying anything about the subject. He denied saying anything about plant closure and added that supervisors had been warned against making any such statements.

[33] R. Br. 59.

b. *Factual and legal analysis*

Lyles obviously had much better recall of this conversation, and described it in apparently authentic detail. As a current employee, it is unlikely that she testified falsely against her Employer's interest. I credit her testimony that Hall said the employees did not have to worry about holiday pay in 1992, because the plant would be closed if they voted for the Union. This statement violated Section 8(a)(1).

I. *The Alleged Posting of Notices Threatening Spanish-Speaking Employees with Termination and Deportation if They Signed Union Cards*

1. The evidence

The General Counsel's principal witness in support of this allegation was Oreida Clarke. She was born in Panama and, after coming to the United States, worked for Respondent since 1988. Clarke, a current employee, works in the sheet distribution supply department on the first floor of Respondent's plant 1, in Kannapolis. She speaks and reads Spanish, and also speaks Latin. For a period of time, Clarke acted as a translator for Respondent in communication with its Spanish-speaking employees.[34]

Clarke was the only person who spoke Spanish in her department. However, the nearby towel distribution center had Hispanic employees. Clarke testified that she was going to work through gate 15 in mid-July when Mike Moore, a truck loader, asked whether she spoke Spanish. Moore himself did not do so. Clarke answered affirmatively, and Moore said that he wanted her to translate something for him.

Moore took Clarke to the nearby loading office, where notices are posted on the windows. Clarke testified that a document in Spanish, about the size of a letter was taped to the outside of the window. The document had the words ''Fieldcrest Cannon'' at the top.[35] The main body of the letter had ''propaganda'' against the Union, according to Clarke. In the lower right hand corner was a separate typed section, also in Spanish. Clarke testified she translated this section to Moore as follows: ''If you sign the green card and the Government find out about it, you will be deported or sent to prison.'' The record evidence establishes that the Union's authorization card was green, and there is no evidence that the reference to the alleged green card had any other meaning.

Clarke testified that she told Moore that the statement was illegal. It was time for her to report for work, and she left. Clarke returned to the loading office window the next day for the purpose of making a copy, but the notice was gone. She affirmed that only the Company put notices on the window.

Documents of this nature were subpoenaed by the General Counsel, and the Company denied that it had any. Gerald Holt was the department manager of the sheet distribution

[34] After Clarke's testimony on April 9, 1992, in support of the 8(a)(1) allegation, the Union filed a charge that Respondent had discriminatorily discontinued her translating assignments. This is alleged in Case 15–CA–15006, which was consolidated with the other cases, as indicated above. The alleged discrimination against Clarke is discussed infra.

[35] Clarke did not see a crown and a cannon, which appear on one of the Company's letters in evidence, G.C. Exh. 5.

center during the union campaign, and supervised the posting of notices, which he received from the personnel manager. Although some of the proffered notices were in Spanish, Holt did not accept them because, he said, ''[W]e don't have any Spanish speaking people in the plant.'' English notices were posted in various areas, including the windows of the loading office, near the loading dock. Although these notices were accessible to other persons, only supervisors were authorized to post them.

Max Speight, a shift supervisor at the loading dock, testified that he received notices from Holt and posted them on both the inside and the outside of the glass panels. None was in Spanish, and Speight professed lack of knowledge of any Spanish speaking employees in the towel distribution department. He acknowledged that some employees passed the loading office when entering the plant.

Speight said that there were two glass panels to the loading office, separated by a door. Before the advent of the union campaign, the Company used only one of the panels for scheduling notices and other work-related material. Thereafter, it posted notices pertaining to the union campaign.

Cletus Gill was a second-shift supervisor in the sheet distribution center, and testified that he posted notices on the glass panels of the sheet loading office. Gill had a fill-in supervisor who substituted for him on occasion.

2. Factual and legal analysis

Respondent argues that the evidence that there was any such document as described by Clarke is ''skimpy, and that evidence of the Company's responsibility for its posting is ''nonexistent.[36]

Although Holt denied accepting any Spanish language notices from the personnel manager, his testimony establishes that the Company did in fact prepare such notices. Although all of the Company's witnesses denied posting any Spanish notice, much less one of the nature described by Clarke, Speight acknowledged that Respondent posted notices pertaining to the union campaign on the glass panels. The company witnesses agreed that only supervisors could post notices, and the Company's denials do not include all supervisors who may have done so, including the fill-in supervisor for Cletus Gill. This evidence does not directly rebut Clarke's testimony that she saw the notice. She was a very intelligent and truthful witness, and her trustworthiness is augmented by her status as a current employee. Parts of the supervisors' testimony—the denial that the Company had any Hispanic employees—are contradicted by other evidence. I conclude that Clarke did see the notice which she described, in mid-July.[37]

Respondent next argues that there is no evidence that a supervisor posted the notice, and that the record ''supports the notion that the notice was the work of an employee rather than Respondent.[38] This argument is no more than it purports to be, a ''notion.'' The record clearly establishes that only supervisors could post notices, and the document had Respondent's name at the top. Despite the absence of direct proof that a supervisor posted the notice, supervisors allowed it to remain on a glass panel where other company notices were posted. Accordingly, Respondent is responsible for the obviously coercive effect of the notice. *Bancroft Mfg. Co*., 189 NLRB 619, 629 (1971). I, therefore, find that Respondent violated Section 8(a)(1) by this posting. There is a slight difference between the language of the allegation and that which the evidence discloses, but the matter was thoroughly litigated.

J. *The Alleged Threats of Unspecified Reprisals for Union Activities*

1. Robert Freeland

a. *The evidence*

As indicated, Plant Manager Robert Freeland held numerous captive audience meetings with employees during the union campaign. Charlotte Hayes, a current employee, testified that, during one of these meetings in mid-July, Freeland pointed at various employees throughout the room and said, ''Any of you that I know for sure is for the Union, if it does not get in, I will remember you. This is like a war—we don't kiss and make up.'' On cross-examination, Hayes agreed that Freeland told the employees that he would not hold a ''grudge,'' but did not recall his saying that he would not discriminate against employees. Hayes had a later private conversation with Freeland, in which he said that he would not hold a grudge and would be fair. Hayes asked Freeland how he could ''remember'' and still not hold a grudge, but received no answer.

Five other current employees[39] and an alleged discriminatee[40] testified that Freeland made one or more of the following statements: that he did not like unions, that it was war, that he would use every legal means to keep the Union out, that he would not forget the ''union pushers,'' and that you could not be friends with the other side. All except one of these witnesses recalled that Freeland said he would not discriminate against union supporters.

Freeland testified and corroborated the General Counsel's evidence. Thus, he agreed that he told employees that if they were fighting for the Union they were fighting against him and his family, and they were at war. Once the campaign was over, they would not ''kiss and make up.'' However, Freeland contended, he also told employees that he would not hold grudges, would not discriminate against anybody, and would treat all employees fairly.

b. *Factual and legal conclusions*

There are only minor variations in the testimony, and I shall assume for the purpose of analysis that Freeland told employees that he would not hold a grudge or discriminate against them, despite his other remarks.

Respondent relies on judicial disagreement with Board findings in two cases, *Fort Smith Broadcasting Co*., 146 NLRB 759, 763, (1964), enf. denied 341 F.2d 874 (8th Cir. 1965), and *Pullman, Inc*., 160 NLRB 1348 (1966), enfd. in

[36] R. Br. 65.

[37] The General Counsel elicited other evidence of the existence of the notice, to which Respondent objected on the ground that it was hearsay. I have relied only on Clarke's testimony.

[38] R. Br. 66.

[39] Wade Story, Patricia Boger, Norma Chapman, Patricia Cavin, and Euretha Lee.

[40] Susan Cavin.

part 389 F.2d (5th Cir. 1968). In *Fort Smith Broadcasting*, the Board adopted the trial examiner's conclusion that a supervisor's threat of withdrawal of personal friendship with an employee because of union activities violated Section 8(a)(1) (146 NLRB at 762–763). The Court of Appeals for the Eighth Circuit disagreed, and held that ''an employer's termination of personal friendship with an employee, motivated by antiunion animus, is not within the ambit of illegal conduct which Congress intended to proscribe in Section 8(a)(1).'' 341 F.2d at 879.

In *Pullman, Inc*., the trial examiner found various violations of Section 8(a)(1) of the Act, including a statement by a supervisor that his friendship with the employees would end if the union entered the plant. The trial examiner distinguished *Fort Smith Broadcasting* on the ground that *Pullman* did not involve a threat to a social relationship, as in *Fort Smith Broadcasting*, 160 NLRB at 1354 fn. 19. The Court of Appeals for the Fifth Circuit agreed with the Board's findings on other violations, without specific comment on the threat to withdraw friendship. 389 F.2d at 196.

Relying on this authority, Respondent argues that Freeland's statements meant only that he did not want union supporters as his personal friends. The Company also relies on Freeland's statements that he would not discriminate against union supporters.[41]

The Board in another case has reaffirmed its position in *Fort Smith Broadcasting* and *Pullman*, with apparent judicial approval. *Wilker Bros. Co*., 236 NLRB 1371 (1978), enfd. as modified 652 F.2d 660 (6th Cir. 1981). In that case a supervisor, upon learning that an employee was a member of a union organizing committee, told her that ''they were not friends anymore.'' 236 NLRB at 1372. Disagreeing with the administrative law judge, the Board held that, in the context of other conduct by the employer where animus was found, the threatened withdrawal of friendship ''referred to the fact that [the supervisor] equated union affiliation with disloyalty. 236 NLRB at 1372. The Court of Appeals for the Sixth Circuit did not discuss this finding specifically. Although it disagreed with some of the Board's conclusions not relevant here, the court enforced the Board's order ''in all other respects.'' 652 F.2d at 662.

The rationale of *Fort Smith Broadcasting*, *Pullman*, and *Wilker Bros*., is particularly applicable in this case. The violation alleged herein did not involve an isolated conversation with one employee. Rather, it was made at meetings which employees were compelled to attend, and was repeated several times. The statements were made in the context of extensive interference with and coercion by Respondent in connection with employee rights. The hostile tenor of Freeland's language—that the ''union pushers'' were fighting him and his family, that it was ''war,'' and that they would not ''kiss and make up'' when it was all over—warrants a conclusion that Freeland was equating union support with disloyalty to the Company. There is no possibility that his remarks could have been interpreted as referring to personal friendships. Freeland was newly appointed, and was just beginning to introduce himself to the employees.

Respondent's reliance on Freeland's disclaimer of ''discrimination'' is misplaced. As Charlotte Hayes argued with Freeland after the meeting which she attended, how could the plant manager ''not hold a grudge but say [he] will remember''? This addendum to Freeland's remarks was merely an attempt to legitimize otherwise unlawful statements. However, it did not dissipate the tendency to coerce employees. Nor did the purported disclaimer constitute a repudiation of what Freeland was saying in the very same speech. *Taylor Chair Co*., 292 NLRB 658 fn. 2 (1989).

I conclude that Freeland's statements constituted unfair labor practices within the meaning of Section 8(a)(1).

2. Carl (Bud) Milstead

a. *The evidence*

This allegation is based on an alleged statement made by Supervisor Milstead to Kay Love, in the presence of Angela Coleman. Love was a ''spare hand, i.e., an employee not assigned to a regular job, who filled in when one was open.

Milstead testified that Love asked him how spare hands would work if the Union entered the plant. The supervisor replied that he did not know, but would find out. He asked Department Manager Tim Jones, who had worked in the Company's unionized plant in Fieldale, Virginia.

The Company did have a collective-bargaining agreement with the Union at other plants, including Fieldale. It guaranteed employees a minimum amount of work or pay upon reporting, depending upon the assigned shift. However, the contract provided for certain exceptions to its provisions, including ''spare hands.[42]

According to Milstead, after talking with Jones he returned to Love and told her in the presence of Coleman, that spare hands would be treated differently if the Union came in. They would be used as needed, and the Company did not have to guarantee them any minimum hours, but could send them home. Coleman testified that Milstead told Love that if the Union came in and there was nothing for a spare hand to do the Company could send her home.

b. *Factual and legal conclusions*

Milstead's testimony about his prior conversation with Love and his discussion with Jones is uncontradicted, and is credited. Coleman's testimony does not materially contradict Milstead's.

The standard for assessment of employer predictions of adverse circumstances for employee is that, to be lawful, the prediction ''must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control . . . . If there is any implication that an employer may or may not take action solely on his own initiative for reasons unrelated to economic necessities and known only to him, the statement is no longer a reasonable prediction based on available facts but a threat of retaliation based on misrepresentation and coercion.'' *NLRB v. Gissel Packing Co*., 395 U.S. 575, 618 (1969).

The Board has recently discussed this issue in the context of an allegedly unlawful statement that, in the event of unionization, the employee would not get pay raises as frequently because the Union only provided for raises every 3 years. The Board noted that the subject of the statement, pay raises, was not something that the employer could effect

[41] R. Br. 70.

[42] R. Exh. 107, sec. 13.

''solely on his own initiative,'' as he could in the case of a plant closure. Agreement on pay raises would have to be the result of mutual consent by the negotiating parties. Accordingly, the Board held, the supervisor's statement reflected his understanding of union contract provisions that there would be fewer wage increases if the employees selected the Union as their representative.[43]

The same reasoning is applicable herein. Agreement on minimum reporting pay, like wage increases, would require the mutual consent of the parties. Although the evidence does not disclose that Milstead specifically told Love that spare hands would be treated differently because of a provision in a contract, the context of his two conversations with her warrants an inference that this was the meaning conveyed to Love. Certainly, the objective facts show that the contract at Respondent's unionized plant in Fieldale did allow it to treat spare hands differently from other employees.

Although the General Counsel's brief lists this subsection of the complaint, there is no discussion of Milstead's statement.[44] I conclude that it was not unlawful, and shall recommend that this allegation be dismissed.

3. Dorothy (Dot) Brooks

I have concluded that Brooks unlawfully interrogated Reginald Turner in early August.[45] In this same conversation Turner told her that he was for the Union. Brooks said that she had considered him to be her godson, that he had requested advice from her, but that she could not assist him further.

Brooks' statement was a threat of a withdrawal of the benefit of ''advice'' from Turner because of his support of the Union. Despite the somewhat ambiguous nature of the benefit, it is clear that Brooks statement informed Turner that he would be treated less favorably because of his support of the Union. The Board has concluded that a similar statement violated Section 8(a)(1). *Danzansky-Goldberg Memorial Chapels*, 264 NLRB 840, 856 (1982). I reach the same conclusion in this case.

4. Reganna Earwood and Ruth Blalock

I have found above that Earwood and Blalock, in early August, engaged in unlawful interrogation of Reginald Turner. During this and a prior conversation they also told him that Brooks had reported that he supported the Union, that he had two points against him, and that he would be ''right out the door now'' if he did not sign a union withdrawal card.[46]

This statement was obviously unlawful, and I so find.

5. James O'Kelly

a. *The evidence*

I have found that O'Kelly unlawfully (1) interrogated Elboyd Deal on August 1 regarding authorship of an article; (2) advised him to resign in late June because of his union activities; and (3) threatened him on June 10 with discharge because he met with a Board agent.[47] In addition, the complaint alleges that O'Kelly threatened an employee on July 11 and August 15 with unspecified reprisals for engaging in union activities.

The evidence again concerns an alleged conversation between Deal and O'Kelly. Deal testified that his picture appeared in a union newsletter on about July 11. O'Kelly told him that he was ''disappointed'' that Deal let the Union print this picture. In addition, O'Kelly ''might have said management would be coming down hard on him (O'Kelly).'' Deal's picture appeared again in a union pamphlet on about August 15. He testified that O'Kelly told him that management had seen this picture, that they were ''very pissed,'' and that these things were going to cost both Deal and O'Kelly their jobs. O'Kelly denied making these statements.

b. *Factual and legal conclusions*

Respondent argues that the conversations never took place, and that, in any event, O'Kelly's alleged statement that management might be coming down hard on him, did not constitute a threat against Deal.[48]

As I have stated above, Deal was a more truthful witness than O'Kelly. I credit his testimony. O'Kelly's statement that management might be coming down harder against him must be viewed in context with his other unlawful statements, including the one on June 10, that the Company was going to come down harder on *Deal* for going to the Board, and was going to require O'Kelly to ''write [him] up for anything.[49] In these circumstances, O'Kelly's further statement that the Company might be coming down harder on him, O'Kelly, because of a picture of Deal in a union publication, was coercive, as was, obviously, O'Kelly's statement on August 15 that the appearance of Deal's picture in a union publication would cost both Deal and O'Kelly their jobs.

6. James Allen

a. *The evidence*

Earl White was hired in mid-June in the packing department, where James Allen was a supervisor. White wore union buttons in early August, and credibly testified that Allen told him that he could not attend an employee meeting called by the Company unless he took the buttons off and kept his mouth shut. White complied. Allen handed White some antiunion literature, 3 days before the election. White put a union sticker on the literature and gave it back to Allen. Employee Eric Strickland corroborated White. The supervisor was visibly upset by this action, according to White. Allen denied that it took place. White affirmed and Allen denied that the supervisor offered him a Vote-No T-shirt on the day of the election.

White testified that, on August 20, the first day of the election, Allen told him: ''You better forget about that damn Union shit.'' White replied that it was not over yet. Allen denied making the statement.

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[43] *Montgomery Ward & Co.*, 288 NLRB 126 fn. 3 (1988), former Member Babson dissenting.

[44] G.C. Br. 13–14.

[45] Supra, sec. II,A,2.

[46] Id.

[47] Supra, secs. II,A,3, E, and F,1.

[48] R. Br. 76, 77.

[49] Supra, sec. II,F.

b. *Factual and legal conclusions*

White impressed me as a more truthful witness than Allen, and I credit his corroborated testimony. Respondent argues that Allen's statement, even if made, could not be construed as a threat.[50] However, the Board has held that a supervisor's statement to an employee to keep out of the union tended to indicate the employer's displeasure with and thus discourage union activity, in violation of Section 8(a)(1). *Lord Jim's*, 259 NLRB 1162, 1164 (1982). This statement is indistinguishable in meaning from Allen's statement to White that he had better ''forget that damn Union shit.'' I conclude that Allen's statement constituted an unfair labor practice.

7. Don Ross

a. *The evidence*

Don Ross was a supervisor in the towel sewing department. The alleged violation involved asserted statements which he made to employee Norma Chapman when the latter was engaged in a conversation with Theresa Kidd.

According to Chapman, corroborated by Kidd, the two employees were friends, and talked to one another at least once a day. Sometime these conversations took place in the breakroom, and sometimes by Kidd's machine.

Chapman was a union supporter, but Kidd was undecided. On about August 1, according to Chapman as corroborated by Kidd, the latter walked up to Chapman's machine wearing a Vote-No sticker. Chapman asked, ''Is this the way you feel?'' Kidd replied affirmatively. Chapman responded that she was glad Kidd had made a decision. Kidd asked whether Chapman would still be Kidd's friend, and Chapman replied that she would not tell Kidd that she liked it, but that they were still friends.

Chapman testified that Kidd's decision upset her, and she further testified without contradiction that, about 1-1/2 hours later, an employee (whom she named) told her that Kidd felt that Chapman was angry with her. Chapman thought about this for about 15 minutes, and then went to Kidd's machine. She testified that she hugged Kidd, and said that the latter was still her friend no matter what she wore.

Thereafter, further conversation took place. In response to a leading question on direct examination, Kidd asserted that Chapman ''harassed'' her about her choice. On cross-examination, Kidd agreed that the only statements made by Chapman were to ask Kidd whether she was sure about wearing the union emblem, and that she could influence a lot of employees. Kidd testified that she was angry, and ''just wanted to be left alone about it.''

According to Chapman, Ross came over to Kidd's machine—the first time he had ever done so when the two employees were talking there. He was ''real red in the face,'' ''very angry,'' and shaking his finger. ''I will not have you harassing my people,'' he told Chapman.

Chapman replied that she was not harassing Kidd, but merely saying that she loved her. Kidd testified that she did not tell Ross that Chapman was harassing her. Chapman further told Ross that he was not her enemy, ''contrary to what that man, Mr. Freeland[51] said.''

Ross replied: ''Let me make one thing perfectly plain to you, Norma. If you don't believe what I believe, and don't support what I support then I don't have anything to do with you. And, the best thing for you to do is to shut your mouth, go back to your machine, and go run your job. Because the next four weeks are going to be very rough.'' Chapman complied with this order.

Ross testified that Debbie Burris told him he ought to get back to Kidd's machine. Burris was a fill-in supervisor, and did not support the Union, according to Ross. He went back to where Chapman and Kidd were talking. Ross stated that one looked ''unhappy,'' and that there was a ''strained'' feeling, but he could not hear what they were saying. Ross had an incomplete recollection of what he then said to Chapman, and what she replied, but admitted some of the statements attributed to him by Chapman. He knew that she was a ''strong supporter'' of the Union.

b. *Factual and legal conclusions*

I credit Chapman's superior recall of the conversation between her and Ross at Kidd's machine. Ross' statement that he would not have anything to do with Chapman if she did not believe as he believed, and did not support what he supported, informed her that she would be treated less favorably because of such lack of agreement. The only known possible subject of disagreement was the union campaign. Accordingly, Ross' statement tended to inform Chapman that she would be treated less favorably because of her support of the Union. The coercive effect of this statement was augmented by Ross' further statement that things were going to be ''very rough'' for the next 4 weeks. I conclude that Ross' statements violated Section 8(a)(1) of the Act. *Danzansky-Goldberg Memorial Chapels*, supra.

K. *The Alleged Threats of Unspecified Reprisals if the Employees Selected the Union as Their Representative*

The complaint alleges that two supervisors threatened employees with unspecified reprisals if they selected the Union as their collective-bargaining representative.[52]

1. Ted Godfrey

I have found that Supervisor Ted Godfrey unlawfully interrogated Alton Linton on about June 12.[53] During this same conversation, Godfrey told Linton that if the Union came in there would be stricter enforcement of the rules, that there would be no breaking of rules, and that the employees would have to deal with the Union rather than Godfrey. The union people were troublemakers who would cause strikes and pit one employee against another. The General Counsel contends that these statements constituted an unlawful threat of an unspecified reprisal.[54]

The Board has concluded that an employer violated Section 8(a)(1) of the Act by telling employees that working conditions would be made stricter if the union organized the employer. *United Artists Theatre*, 277 NLRB 115 (1985). Godfrey's statement to Linton that there would be stricter enforcement of the rules if the Union came in is indistinguish-

[50] R. Br. 79.

[51] Plant Manager Robert Freeland.

[52] G.C. Exh. 1(kkk), par. 14(k). It is unclear how this allegation differs substantively from the one in the preceding subparagraph.

[53] Supra, sec. II,A,4.

[54] G.C. Br. 70 fn. 14.

able in meaning from the employer's statement in *United Artists Threatre*. Accordingly, I conclude that it constituted a threat of unspecified reprisals, violative of Section 8(a)(1).[55]

2. Robert Freeland

The General Counsel argues that Plant Manager Robert Freeland's statements to employees during captive audience speeches, discussed above[56] constituted unlawful threats to employees because they selected the Union, in addition to their union activities. As indicated, there is little substantive distinction between these allegations. I see no reason for the multiplication of unfair labor practices out of the same statement and shall recommend that this allegation be dismissed.

L. *The Alleged ''Harassment'' of Union Supporters*

1. Don Ross

The General Counsel offers Supervisor Ross' statements to Norma Chapman in support of this allegation.[57] I have found that Ross unlawfully threatened Chapman with unspecified reprisals because of her union activities.[58] It adds little to the case to allege that he also ''harassed her for the same reason. I shall recommend that this allegation be dismissed.

2. James O'Kelly

I have set forth above James O'Kelly's various unlawful statements to Elboyd Deal,[59] including the statement that O'Kelly was disappointed'' that Deal let the Union print Deal's picture in its publication.[60] The General Counsel submits that this latter statement constituted unlawful ''harassment'' of Deal for engaging in union activity.[61]

Here again, the complaint includes unnecessary redundancy. I shall recommend that this allegation be dismissed.

M. *The Alleged Order to Wear an Employer T-Shirt Each Day*

The complaint alleges that Supervisor Reganna Earwood ordered an employee to wear an employer campaign T-shirt each day.[62]

I have found that Earwood (and Supervisor Blalock) unlawfully interrogated Reginald Turner about a week before the election. During one of these conversations, in early August, Earwood gave Turner a Vote-No (company) T-shirt, and instructed him to wear it every day.[63] This order violated Section 8(a)(1) of the Act. *R. L. White Co*., 262 NLRB 575, 576 (1982); *Nissen Foods (USA) Co*., 272 NLRB 371, 373 (1984).

N. *The Alleged Threat of Discharge Because of Union Activity*

1. The evidence

The complaint alleges that Supervisor Percy Smith threatened an employee with discharge because he had engaged in union activity, on about August 14.[64] The evidence involves an alleged statement by Smith to Ronald Pharr at the end of a series of events which led to Pharr's suspension and discharge. I consider here only the alleged threat, and discuss later the entire evidence of alleged discrimination.[65]

An underlying dispute in the background circumstances is whether Pharr, as he contended, was complying with Smith's request to take a breathalyzer test, or whether, as Smith argued, Pharr was simply walking off the job. Pharr's position was that he was walking to where he thought the breathalyzer was located, while Smith maintained that Pharr was walking out.

Pharr testified that he walked toward the supply room, where he believed the breathalyzer equipment was located. Pharr's belief in fact was correct. There are various routes from the plant where Pharr walked to the supply room. Pharr took the ''outside route,'' while Smith took another. Pharr testified that he told Smith he would meet him by the supply room. When Pharr arrived near the supply room, he saw Smith standing behind it at the gate. ''Get off the property,'' Smith told Pharr. The latter then walked through the gate, and stood on the street. ''Get off the property,'' Smith repeated. ''I am off the goddamn property,'' Pharr replied. Smith then asked a nearby guard whether he had heard Pharr cursing, and the guard replied, ''Yes.'' Smith then said, ''That's one less vote for the Union.'' Pharr asked the guard whether he had heard this statement and the guard answered, ''Yes.''

Smith testified that he did not get the breathalyzer equipment from the supply room, because Pharr was ''walking off the job.'' The supervisor agreed on cross-examination that he was at the gate before Pharr arrived. He contended that Pharr walked past him outside the gate, and that conversation then ensued. Smith did not specifically deny that he said, ''That's one less vote for the Union,'' and Respondent did not call the guard as a witness.

2. Factual and legal conclusions

It is clear that Smith was at the gate before Pharr arrived. I credit Pharr's testimony, not specifically denied by Smith, that the supervisor first told him to ''get off the property,'' that Pharr complied, and that Smith then repeated the order while Pharr was standing in the street. I also credit Pharr that Smith then said, That's one less vote for the Union.'' The General Counsel contends that this statement constituted a violation of Section 8(a)(1).[66]

Respondent argues that Smith's statement was not an admission that Pharr would be fired for allegedly refusing to take the breathalyzer test. Supervisor Smith contended that the Company merely suspended Pharr pending an investiga-

[55] Because of my conclusion above, it is unnecessary for me to pass on the alleged illegality of other statements made by Godfrey.
[56] Supra, sec. II,J.
[57] G.C. Br. 22.
[58] Supra, sec. II,J,7.
[59] Supra, secs. II,A, C, F, and G.
[60] Supra, sec. II,J.
[61] G.C. Br. 175 fn. 97.
[62] G.C. Exh. 1(kkk), par. 14(m).
[63] Supra, sec. II,A,2.
[64] G.C. Exh. 1(kkk), par. 14(n).
[65] Infra.
[66] G.C. Br. 133 fn. 64.

tion. Respondent cites *Williams Motor Transfer*, 284 NLRB 1496 (1987).[67]

In *Williams Motor Transfer*, supra, the Board accepted an administrative law judge's conclusion that an employee had been discriminatorily discharged. Later, a supervisor told another employee that union activity was one of the reasons for the first employee's discharge. The Board held that this did not constitute a threat of discharge of the second employee.

Williams Motor Transfer, supra, is inapposite. In the case at bar, the alleged threat was directed toward a union activist who was actually discharged. Respondent's argument that Pharr was merely suspended has no merit. Respondent's standard practice was to suspend an allegedly offending employee ''pending discharge,'' and later to effect the actual discharge. It is true, as Respondent argues, that Smith did not explicitly threaten discharge. However, his statement—''that's one less vote for the Union''—could have meaning only if Pharr was no longer employed on the day of the election. It therefore constituted an implied threat of discharge violative of Section 8(a)(1). *United Parcel Service*, 247 NLRB 861, 865–866 (1980).

O. *The Alleged Threat to Suspend and Otherwise Discipline Employees Because of Their Union Activities*

The complaint alleges that three supervisors threatened employees with suspension and other discipline because of their union activities.[68]

1. James O'Kelly

I have concluded that O'Kelly unlawfully (1) interrogated Elboyd Deal on about August 1;[69] (2) asked him on June 29 whether he had considered quitting;[70] (3) threatened him on June 10 with discharge because he met with a Board agent;[71] and (4) threatened him with discharge on July 11 and August 15.[72]

The complaint alleges that the particular incidents referred to in this allegation took place in ''early August,'' ''June 12–August,'' and ''August 23.'' The General Counsel's brief does not designate which of O'Kelly's many statements in the ongoing saga of his conversations with Deal are referred to in this section of the complaint. I am unable to make this determination from the record alone, and, accordingly, recommend that this allegation be dismissed.

2. James Allen

a. *The evidence*

The evidence concerns Earl White, a probationary employee who was a union supporter. Supervisor Allen knew this. I have previously found that Allen unlawfully threatened White on August 20.[73] The complaint alleges additional unlawful conduct on August 23, after the election. On that date, White and other employees engaged in singing in the ''smoker'' an area set aside for smoking during break periods. As White returned to work, Allen called him to Allen's desk, told him that he had heard the singing, and said: ''I could write you up. I'll give you 10 days for it, or I can fire you for it.'' Allen did not do either of these, and sent White back to work. The General Counsel contends that his statement was an unlawful threat.

Allen testified that White had violated a company rule prohibiting a ''disturbance'' in the mill, including fighting, and another rule prohibiting disorderly conduct.[74] Respondent argues that Allen merely informed White of the possible result of future infractions of the rules, and thus was not coercive.[75] Allen also testified that probationary employees are not subject to discipline. He contended that he gave verbal warnings to other employees, some of whom favored the Company, for ''disruptions'' during the union campaign. Allen made a ''file memo'' about White's alleged disruption.[76] He filed it in his own personal file, and did not send a copy to the personnel department.

There are conflicting accounts of what actually took place. There is general agreement that several employees engaged in singing union songs in the smoker. Paulette Johnson, a current employee, testified that she was one of the employees singing. It was ''real soft'' according to Johnson, except for the union chant: ''What time is it? It's Union time.'' This was made once. The nearest machine was 20 to 25 feet away, and the machines were running. Because of the noise of the machines, Johnson doubted that the operators heard the singing, although she acknowledged that nine employees on the folding machines and four reinspectors may have heard it. None of the supervisors, including Diane Hartis, Johnson's supervisor, made any complaint. Employee singing during a prior Christmas was louder, Johnson stated. Eric Strickland, who left before the singing ended, testified that it diminished as he walked away from the smoker.

Ivey Mosely contended that White stood on a bench in the smoker and said, ''We are the Union, the mighty Union,'' and led the union chant. According to Mosely, other employees stopped putting sheets in their machines for 10 minutes. Mosely said that some of these employees were on break, and others were not. Mosely agreed that she opposed the Union.

Roslyn Hemphill testified to similar effect, and asserted that employees watched the signing and stopped to see what was happening. Hemphill averred that the singing lasted 5 to 10 minutes.

Yvonne Hammond testified that White was standing on a bench ''cheering for the Union, and you could hear it all the way back to the desks.'' Hammond contended that Allen had once given her a verbal warning for ''yelling and screaming,'' but did not mention suspension or discharge. After the

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[67] R. Br. 89.

[68] Bob White, James O'Kelly, and James Allen. G.C. Exh. 1(kkk), par. 14(o). The General Counsel has moved to delete the name of Bob White from this allegation. G.C. Br. 171 fn. 91. This motion is granted.

[69] Supra, sec. II,A.

[70] Supra, sec. II,E.

[71] Supra, sec. II,F.

[72] Supra, sec. II,J.

[73] Supra, sec. II,J,6.

[74] Rule 3, prohibiting a ''disturbance,'' states that the employee will be suspended without pay ''immediately.'' White was not suspended. Rule 13, prohibiting ''disorderly conduct,'' provides for suspension for a first offense, and discharge for a second offense within 6 months. G.C. Exh. 23. See discussion of White's discharge, subsec. 18 in section on alleged discrimination.

[75] R. Br. 97.

[76] G.C. Exh. 34.

incident in the smoker, Allen asked Hammond to be a witness to his conversation with White.

Allen asserted that he could hear the noise from his desk about 100 yards away from the smoker. He averred that employees stopped their jobs ''just a few minutes,'' but later agreed that all of his employees were on break, and that there was no disruption of their work.

b. *Factual and legal conclusions*

There is abundant evidence in this voluminous record that the Company's machines were noisy. Allen's testimony that he could hear the singing in the smoker at his desk 100 yards away is unbelievable. I credit Johnson's testimony that the machines nearest the smoker, about 20 to 25 feet away, were themselves so noisy that the operators could not hear the singing, with a few exceptions. Although they may have heard the union chant, in louder tones, this happened only once.

Respondent's apparent argument that the incident stopped production is not sustained by the evidence. Although Mosely and Hemphill contended that this took place, their averments were vitiated by Allen's admissions about the extent to which the machines were stopped, and by the absence of any objections from supervisors. If the nearby employees could not hear the singing, as I have found, they would have had no reason to stop their machines. To the extent that the employees were paid on a piece rate basis, and some were, it would have been against their financial interest to stop the machines, and would have subjected them to discipline. I credit Johnson's testimony that the machines were running.

Respondent cites *Ford Motor Co*., 246 NLRB 671 (1979), where employees ''marched through the plant chanting slogans while other employees were attempting to work.[77] The administrative law judge found that this activity warranted discipline, but stated that his conclusion would have been otherwise ''[i]f the demonstration had been confined to the cafeteria,'' where it started (id. at 675). The Board agreed with the judge's conclusion, noting that the credited evidence established interference with production (id. at 671 fn. 2).

The credible evidence in this case establishes that there was no march through the plant, and no interference with production. Immediately subsequent to a Board election, several employees engaged in singing union songs, and chanting the union slogan (once) during a break period in a break area.

Allen did not explain the details of the Company's rules to White,[78] and the latter's conduct did not create a ''disturbance,'' or constitute ''disorderly conduct.'' In essence, Allen's statement to him was that he could be suspended or fired for engaging in protected, concerted activity. This was violative of Section 8(a)(1).

P. *The Alleged Threat of More Stringent Enforcement of Rules*

The complaint alleges that two supervisors threatened employees with more stringent enforcement of rules if the employees selected the Union.[79]

1. Ted Godfrey

I have already concluded that Godfrey engaged in this particular unfair labor practice.[80]

2. Rod Purser

a. *The evidence*

Eldridge Henry testified that, on August 2, Supervisor Purser gave him a verbal warning for excessive absenteeism. Purser told Henry, according to the latter, that if the Union came in, it went ''strictly by the rules,'' and would make Purser fire Henry.

Purser testified that Henry had been absent in the past, but that Purser had not administered any discipline because the absences were related to Henry's personal problems. According to Purser, he told Henry that if the Union came in, it would possibly take away Purser's flexibility in showing leniency in such matters.

b. *Factual and legal conclusions*

Respondent argues that Purser should be credited, and that his statement merely amounted to a permissible explanation of the changed relationship which occurs between employer and employee when the employer becomes unionized. Even if Henry is credited, his testimony shows that his discharge would be dictated by the Union, not the Company.[81]

Purser's testimony corroborates rather than opposes Henry's. If the Union would take away Purser's flexibility in being lenient on disciplinary matters, this amounts to saying that the arrival of the Union would result in stricter enforcement of Company rules. This is consistent with Henry's testimony, which I credit, that Purser told him the Union went strictly by the rules, and would make the Company fire Henry for future infractions.

Respondent's argument that this statement was not coercive, because it attributed stricter discipline to the Union, has no merit. Regardless of whether the Union or the Company initiated the change, Purser's statement was a declaration that unionization of the plant would result in stricter enforcement of company rules. This was unlawful, for reasons already given.[82]

Q. *The Alleged Statement that Employees Were Assigned Additional Work Because of Their Union Activities*

1. The evidence

Elboyd Deal was a production clerk, as indicated. One of his duties was to transfer data on cases from ''computer guns'' carried by forklift operators to a mainframe computer, a procedure called ''dumping the guns.'' Deal had to perform this duty with four to six forklift operators. He normally did this once daily. On about June 14, O'Kelly told him that he would have to engage in this procedure twice daily. According to Deal, O'Kelly said: ''You see what your Union badge is doing for you, Mr. Deal.'' Deal complied

[77] R. Br. 98.
[78] Supra, fn. 70.
[79] Ted Godfrey and Rod Purser, G.C. Exh. (1)(kkk), par. 14(p).
[80] Supra, sec. II,K.
[81] R. Br. 100–103.
[82] Supra, sec. II,K.

with the order, and estimated that it took him about one extra hour to perform the additional work.

O'Kelly testified that the transfer of data had originally been performed twice daily, but that Deal had drifted away from it to once per day. O'Kelly stated that he received a complaint from the order data processing department that they were unable to produce invoices for shipments that had been made but had not yet entered the computer system. O'Kelly determined that the cause was the failure to transfer the data from the computer guns more than once daily. Accordingly, he ordered Deal and another production clerk, Cynthia Overcash, to do so twice daily. The latter corroborated O'Kelly.

2. Factual and legal conclusion

Respondent argues that Deal's testimony was ''simply a fabrication.[83] However, O'Kelly did not deny Deal's testimony about O'Kelly's statement accompanying the order. I credit Deal's unrebutted testimony and find that O'Kelly, while giving a new order increasing Deal's duties, said to him, ''You see what your Union badge is doing for you, Mr. Deal.'' The obvious implication is that Deal's union activities were the reason for the increase in his duties. Regardless of the Company's reason for the change, O'Kelly's statement accompanying it was coercive and a violation of Section 8(a)(1) of the Act.

R. *The Alleged Statements Disparaging Employees for Their Union Activities*

The complaint alleges that four supervisors disparaged employees for engaging in union activities.[84]

1. James O'Kelly

The General Counsel argues that this violation was committed when O'Kelly interrogated Deal about authorship of an article appearing in a union publication, and when Department Manager Brandon later told Deal that the article was pack of lies and a bad reflection on Brandon's department.[85]

I have already concluded that O'Kelly's part in this incident constituted unlawful interrogation. Any further characterization of it would be surplusage. Brandon's name does not appear in this section of the complaint. Accordingly, I shall recommend that the allegation be dismissed.

2. Robert Freeland

The General Counsel alleges that this violation is established by Freeland's statements in his captive audience speeches that the union campaign was a war, and that the union supporters were not his friends.[86] I have already concluded that Freeland's remarks violated the Act.[87] Accordingly, I shall recommend that this allegation be dismissed.

[83] R. Br. 105.

[84] James O'Kelly, Robert Freeland, Windy Black, and Don Moose. O'Kelly's name appears twice in the allegation. G.C. Exh. 1(kkk), par. 14(r).

[85] Supra, sec. II,A; G.C. Br. 176 fn. 99.

[86] G.C. Br. 118 fn. 51.

[87] Supra, sec. II,J,1.

3. Windy Black

a. *The evidence*

Sandra Greene testified that she attended a union press conference on July 18, as a result of which her picture appeared in a local newspaper. Greene returned to work after a 2-day absence because of illness. She testified that Black said to her that she did not believe that Greene would show her face back in there, i.e., the mill. Greene inferred that Black was referring to Greene's picture in the newspaper. Greene asked, ''Why, Windy?'' The supervisor replied, ''That's the way friends will do you.''

Black contended that, when Greene returned to work, she giggled and asked Black whether the latter saw Greene's picture in the paper. Black answered, ''Yes.'' Greene then asked whether Black liked the picture, and the supervisor replied, ''No.''

b. *Factual and legal conclusions*

Respondent argues that Greene's testimony is ''unintelligible,'' and notes her admission that Black did not specifically mention the newspaper picture.[88] However, Black's testimony clearly shows that she and Greene had a conversation after the latter's return from a 2-day absence, and that the conversation involved Greene's picture. Greene was a current employee, and I credit her version of this conversation, augmented by Black's reference to the discussion of the picture.

Respondent cites *Sears, Roebuck & Co*., 305 NLRB 193 (1991), and its discussion of *Future Ambulette*, 293 NLRB 884 (1989),[89] as follows:

> In *Future Ambulette*, the Board adopted without comment the judge's finding that an employer had unlawfully made disparaging remarks about a union business agent's honesty and competence. The finding was grounded, however, not only on the derogatory nature of these remarks, but also on their context among other coercive statements, especially those tending to convey to employees the futility of their efforts to have the union as their collective bargaining representative. Id. [305 NLRB 193.]

I have found that Black unlawfully told Greene in June that the employees were scheduled to receive a raise in August, but would not get it because the Union had arrived at the mill.[90] Further, Black's statement to Greene in July was made in the context of numerous other coercive statements by other supervisors. Black's statement that she did not believe that Greene would come back to her job after her picture appeared in the paper conveyed to Greene Black's belief that union activity and continued employment were incompatible. I conclude that Black's remark violated Section 8(a)(1) of the Act.

[88] R. Br. 109–110.

[89] Id. at 105.

[90] Supra, sec. II,C,2.

5. Don Moose

a. *The facts*

Peggy Jordan testified that she was wearing numerous union buttons and insignia on her skirt, blouse, and hat in early August. Department Manager Don Moose approached her and said that she looked ''tacky'' with the insignia. He did not ask her to remove any of the insignia. Jordan removed some of the material, and Moose later told her that she looked better, but that there was room for improvement. Moose corroborated Jordan.

b. *Legal conclusions*

The initial issue is whether Moose's statement was sufficiently disparaging so as to be unlawful, if made in the context of coercive statements. There is no evidence that any other employee heard Moose describe Jordan's attire as ''tacky.'' Actually, Moose was giving his opinion of multiple insignia on Jordan's attire, rather than her clothing. I conclude that Moose's statement was not sufficiently offensive so as to be unlawful. Accordingly, I shall recommend that this allegation be dismissed.

S. *The Allegation of Closer Monitoring of Union Supporters*

1. Perry Harkey

a. *The evidence*

Tony Bumgarner, a current employer and union supporter, testified that, prior to the advent of the union campaign, Supervisor Perry Harkey checked with employees when they arrived for work, but was not on the floor thereafter. When the union campaign started, Harkey watched Bumgarner and a coworker-worker ''every hour on the hour, watch in his hand.'' Harkey did this by looking through apertures of the racks used to store merchandise. This practice ceased after the election, according to Bumgarner.

Harkey testified that he had been told that Bumgarner was a union supporter, and that another employee, Martin Kelly, told him that Bumgarner had attempted to get Kelly to sign a union card. Harkey also agreed that management had instructed him to be available on the floor for employees in order to answer questions during the union campaign. This represented additional duty for him. Nonetheless, he maintained that his hours on the floor did not change—he visited the floor five or six times daily before the campaign, and the same time during the campaign.

b. *Factual analysis*

Harkey could not have adhered to management's instructions to be available for employees' questions unless he spent additional time on the floor. His testimony is therefore inconsistent. Bumgarner was a current employee testifying against his own interest, and was a more credible witness than Harkey. I credit Bumgarner.

2. Don Hancock

a. *The evidence*

Sharon Davis was a ''creeler hand'' during the union campaign and was a union activist. She wore union insignia, and her picture appeared in union publications. One of her duties was to find yarn on another floor when none was available on her floor. Don Hancock was a supervisor on the second and third floors. After the union campaign began, employees began asking Davis about it and she responded. She also testified that Hancock ''watched'' her, sometimes stopping in a corner to see what Davis was doing.

Davis testified that she talked to employees before the campaign, but that Hancock paid no attention to her. His ''watching'' began after the campaign started.

Davis testified on cross-examination:

> Q. Now, you said that during the campaign. . . . Mr. Don Hancock, was it Mr. Don Hancock?
>
> A. Yes, sir.
>
> Q. That he would sometimes watch you?
>
> A. When I would come up onto the third floor, which I had . . . always done.
>
> . . . .
>
> Q. And, did he normally spend—even before the Union campaign, did he normally spend time out on the plant floor?
>
> A. Yes, sir.
>
> Q. All the supervisors have always spent time on the plant floor, haven't they?
>
> A. They're required to. Not all of them do it, but they're—it's a requirement that they spend—
>
> Q. I mean that's part of their job?
>
> A. Right.
>
> Q. —to be watching what 's going on, isn't it?
>
> A. I assume so, if that's a responsibility of a supervisor I don't know their responsibilities.
>
> Q. Okay. And, while he was watching you, you were at work in work areas doing work?
>
> A. Yes, sir.

Hancock agreed that Davis performed duties on his floor searching for yarn, but denied that he even watched her specifically.

b. *Factual conclusion*

Respondent states as follows about Davis' testimony quoted above:

> On cross-examination, Davis admitted that Hancock would normally spend time out on the plant floor during the course of his duties as a supervisor. She also testified that while Hancock was watching her she was performing work in work areas.[91]

[91] R. Br. 117.

c. *Factual conclusion*

Respondent's characterization of Davis' testimony blurs the distinction which she made regarding Hancock's conduct before and during the union campaign, and suggests, although not explicitly, that there was no difference. I read her testimony to mean that was a distinction, and that Hancock's ''watching'' did not start until after the campaign began. Davis was a current employee testifying against her own interest, and was a credible witness. I credit her testimony.

3. Diane Neely

The heading of the subsection of the General Counsel's brief covering alleged violations by Supervisor Diane Neely lists this subparagraph of the complaint.[92] However, the brief discusses conduct appropriately covered by other allegations, and the record does not disclose conduct by Neely listed in this allegation. Accordingly, I shall recommend that it be dismissed.

4. Diane Hartis

a. *The evidence*

Hartis was a supervisor in the sheet fabrication department. Current employees Joanne Diggs and Sylvia Crawford testified that Hartis did not come to the smokers before the advent of the union campaign, but commenced doing so after the campaign began. Diggs affirmed that Hartis was allergic to smoke. However, Hartis began going to the smokers after the union campaign began, and ''cut in'' on employees' conversations, according to Crawford. Diggs affirmed that Hartis was constantly in the break areas during breaks. After the election, Hartis discontinued this practice.

Crawford also testified that Hartis was on the floor more than she had been prior to the campaign, and sometimes stood and watched Diggs and Crawford. On occasion, Hartis followed Crawford as she was going to other departments.

Hartis contended that she sat in the smoker every day and talked to employees before the campaign began. However, she acknowledged that she went there ''a little more often'' after the campaign started. The reason, Hartis contended, was that people were ''upset on the job,'' and Hartis wanted to make herself more ''accessible'' to them. On the other hand, Hartis denied knowing that the employees were talking about the Union, and denied thinking about the fact that the employees were talking about the Union in the smoker. She added that the canteen was the only place where she was allowed to eat, and that she was responsible for keeping it clean.

b. *Factual conclusion*

Hartis' testimony is inconsistent, while Diggs and Crawford were credible employees testifying against their employment interests. I credit their testimony.

[92] G.C. Exh. 1(kkk), par. 14(s); G.C. Br. 51–53.

5. Terry Burris, Jerry Luck, Rod Purser, and Lewis White

a. *The evidence*

Pat Boger, a union activist, was a hem repairer under the supervision of Terry Burris, Department Manager Lewis White, and Superintendent Jerry Luck. Her desk was 30 feet away from Luck's and White's. Boger testified that, after the advent of the union campaign, Luck and White stood behind her desk for 10 to 20 minutes, two or three times a week. They had not done so previously, and this practice ceased after the election.

Drenia Smith was an order coordinator. Her job required her to go to other sections, including section 4, to consult with other order coordinators. Smith testified that, after the advent of the union campaign, Terry Burris followed her to section 4 every day. He was not a supervisor in that section. Burris watched her while she consulted with another coordinator, and then followed her back. Sometimes he preceded her, occasionally looking around to see whether she was following him. This practice was discontinued after the election.

Smith testified that in mid-July, she and Boger went to the ladies' restroom. Burris was watching them enter. When they came out, Burris, White, and another supervisor, Rod Purser, were standing outside the restroom. Although there were textile machines nearby, the supervisors were facing the bathroom door, not the machines.

Sheila Deal, the wife of alleged discriminatee Elboyd Deal, testified that Burris followed her when she went to Drenia Smith's work station. Sometimes he interrupted them and asked whether they needed assistance. When Smith came to Deal's department, Burris would follow and watch. Deal agreed that Burris was on the plant floor frequently prior to the union campaign.[93]

Burris testified that his work required him to be on the plant floor much of his time, and that it brought him into frequent contact with the employees named above. He denied that he followed them around at work, and denied generally that he observed Drenia Smith or Pat Boger more during the union campaign than he had done previously. Burris did not discuss the alleged incident involving the bathroom. Purser denied watching Smith and Boger go in and out of the bathroom. He contended that supervisors periodically have discussions anywhere on the plant floor. White also denied the allegations.

b. *Factual conclusion*

Burris' general denial that he observed Smith more closely does not specifically rebut her testimony about being followed by Burris to and from section 4. Deal's testimony corroborates Smith. The latter's testimony that Burris was watching her and Boger enter the ladies' room is unrebutted. Although supervisors may confer anywhere on the plant floor, standing outside the ladies' room facing the door hardly seems an appropriate place for managerial consultations.

[93] The complaint lists Burris' name twice in the same subsection, the first time together with the other supervisors listed above. This discussion combines the evidence presented concerning Burris.

Smith, Boger, and Deal were current employees testifying against their own interests, and I credit their testimony.

6. Gary Hinson

a. *The evidence*

Vicki Fink was a creeler hand, a union supporter, and a union observer at the election. Gary Hinson was her supervisor. Fink testified that, prior to the union campaign, Hinson visited her machine twice daily, and told her what work to perform. After the campaign started, Hinson came to her work station three or four times a day, with instructions on work to perform. Occasionally he told her to ''turn up the wick,'' i.e., work faster.

Hinson testified that he was a supervisor of employees running ''spinning frames,'' which produce yarn. The frame is run, at its front, by a ''warper tender,'' and, at its back, by a ''creeler hand,'' who feeds material into the machine. Hinson had 2 warper tenders and 2 creeler hands, among 26 employees, whom he supervised. He contended that the demand for different types of yarn changed during the day, and that he had to alter the orders to the employees running the spinning frames. The number of times he had to do this varied according to the production demands, sometimes three to five times daily, sometimes two to three times if there were no changes in production demands. Hinson testified that he talked more to the warper tenders than the creeler hands in making a production change, because the warper tender is ''responsible for the number of ends.'' Hinson agreed that he told Fink to ''turn the wick up,'' i.e., increase her speed, during the union campaign.

b. *Factual conclusions*

Hinson's generalized testimony about the number of times he changed the production orders does not specifically rebut Fink's evidence that the number of times he spoke to her increased after the advent of the union campaign. Fink's testimony is bolstered by Hinson's admission that he talked more to the warper tenders than to the creeler hands. Hinson admitted telling Fink to speed up during the union campaign. Fink was testifying against her own interest, and I credit her testimony.

7. Carl (Bud) Milstead and Bobby Fowler

a. *The evidence*

Angela Coleman was a hemmer, and was a union supporter. She testified that, prior to the union campaign, she never observed Milstead or Fowler in the vicinity of her machine. When the campaign began, Milstead or Fowler would stand behind her machine, between her and another employee. When Coleman ''pulled her truck,'' Milstead or Fowler would ''jump.'' Coleman went to the smoker two or three times a day. Milstead was a ''nonsmoker,'' and never went to the smoker before the union campaign. After it began, he went there two or three times a day.

Coleman testified that she and other employees were in the restroom one evening at 7 p.m., prior to going home. When she opened the door, Bobby Fowler was ''at the women's bathroom door.'' Coleman testified: ''He was bent over. I opened the door and when I opened it, he like jumped up to say, hey, how you all doing?'' Fowler was hard of hearing in his left ear, and would place his right ear near an individual talking to him.

Milstead testified that his job required him to be on the floor, and denied that he observed Coleman more closely after the union campaign began. Milstead agreed that he did not smoke, but contended that, nonetheless, he went to the smoker ever since his employment with Fieldcrest began, to ''talk to employees'' or answer questions.

Fowler denied monitoring Coleman's activities, or listening to her conversations in the smoker. According to Fowler, there were both men's and women's restrooms side-by-side at the back of the department. Trucks loaded with towels were frequently located just 2 feet away from the front of the restrooms. Fowler denied listening to Coleman's conversations ''anywhere.''

b. *Factual conclusions*

Although the supervisors were told by management to answer employees' questions about the Union, there is no evidence that they were given this instruction prior to the beginning of the campaign. There was therefore no reason for Milstead to go to the smoker prior to the campaign to answer questions. The fact that he did not smoke makes it unlikely that he did go to the smoker before the campaign.

Coleman's testimony about Fowler's and Milstead's standing behind her machine after the campaign started is more detailed and believable than their generalized denials. She was testifying against her interest, and I credit her testimony as to their standing behind her machine and in the smoker.

Fowler's testimony about the locations of the bathrooms, and the proximity of trucks loaded with towels, does not specifically rebut Coleman's testimony that he was bent over in front of the ladies' room door when she opened it. I credit her testimony, but note that I consider it to be evidence pertaining only to the alleged monitoring of union activities.

8. James Allman

Sheila Deal, order coordinator, had a desk within view of the desk of her supervisor, James Allman. When Deal was talking with a hemmer, she would look up and see Allman with his chair turned around, looking at her. Two or three times a day, Allman would come by Deal's desk and pause when she was talking with a hemmer. This was contrary to his prior custom. On about two occasions, when Deal was on the telephone near the canteen, Allman walked past her, did not purchase anything, and then walked back.

Although Allman testified at the hearing, he did not discuss Deal's testimony. She was a truthful witness, and I credit her unrebutted testimony.

9. Jeff Luck

a. *The evidence*

The General Counsel's evidence principally concerns Luck's alleged monitoring of union activities in a smoker. The evidence is conflicting as to whether Luck in fact did smoke.

Dorothy Foster, whom Luck supervised, testified that Luck came into the smoker once or twice before the union campaign, but did not smoke. After the campaign began, Luck came to the smoker during every break. He would take a

''small cigar, and sit down there and puff on it. But not all the time. No, I don't think he smokes at all.'' Employee Sherry Anthony testified that Luck rarely came to the smoker before the campaign. After it started, however, he was there constantly. He had a cigar in his mouth, but did not really smoke.

On direct examination, Luck asserted that he had smoked cigars for 16 years, that he occasionally smoked in the smoker, and denied that he used the smoker more frequently after the advent of the union campaign. However, on cross-examination, he conceded that he went to the smoker more often after the campaign began, and that he knew the Union would be a topic of conversation during the break periods. Luck stated that sometimes these conversations about the Union stopped after he arrived. Luck further admitted that he spent more time on the plant floor during the campaign.

b. *Factual conclusion*

In light of Luck's admissions, I conclude that he came to the smoker during breaks more frequently after the campaign started. I credit Foster's and Anthony's testimony about his smoking habits. Luck knew that the employees would be discussing the Union. I also accept Luck's admission that he spent more time on the floor after the campaign started.

c. *Legal discussion and conclusions*

The Board has considered conduct similar to that in which Respondent engaged. Thus, in *K-Mart Corp*., 255 NLRB 922 (1981), the Board summarized the evidence and stated:

> Contrary to the Administrative Law Judge, we find that Respondent engaged in the above-described conduct in order to keep its employees' union activities under surveillance or to convey to them the message that their activities were being watched. Thus, the credible evidence reveals that shortly after it learned of the Union's organizational campaign, and on the same day that it unlawfully solicited employees grievances. . . . Respondent's supervisory personnel began following certain off-duty employees, all of whom were union adherents, throughout the store and, on at least one occasion, uninvitedly joined said employees during their break time. Furthermore, Respondent had presented no evidence to show that it had engaged in similar conduct prior to the advent of the Union's organizational campaign nor has it offered any explanation as to why it was necessary for its supervisory personnel to engage in such conduct. Additionally, it is significant to note that only the activities of those employees whose prounion sympathies were either apparently known to, or suspected by, Respondent were kept under surveillance, and that such surveillance occurred primarily during the employees' nonworking time.
>
> Thus, the timing of these incidents to the commencement of the Union's organization campaign, the fact that they occurred during the employees' nonworking time and in the context of Respondent's unlawful solicitation of grievances, and Respondent's failure to offer any reason for ''shadowing'' its own employees combine to lead us to find that Respondent's supervisory personnel engaged in such conduct solely in response to its employees' union activities and to inhibit them from engaging in such activities.
>
> Accordingly, we find that Respondent unlawfully engaged in, and created the impression of, surveillance of its employees' union activities in violation of Section 8(a)(1) of the Act. [Id., 255 NLRB at 924.]

In *Stoughton Trailers, Inc*., 234 NLRB 1203 (1978), the plant manager ordered supervisors to ascertain whether employees were talking about the union on company time, and to direct them not to engage in such activity. In addition, the plant manager was in the prounion employee's work areas more often than he had been prior to his knowledge of the employee's organizational activities. The Board affirmed the administrative law judge's conclusion that this constituted unlawful surveillance. The Board reached a similar conclusion regarding surveillance of union activity in the work place in *Lyman Steel Co*., 249 NLRB 296, 302–303 (1980), and in *Intermedics, Inc*., 262 NLRB 1407 (1982), enfd. 715 F.2d 1022 (5th Cir. 1983). In the latter case the administrative law judge found that supervisors engaged in ''spying on employees during their breaks [and] closely watching employees while they were working.'' (Id., 262 NLRB at 1414.) He noted that the supervisors ''commenced to engage in atypical behavior, characterized by intensive and highly conspicuous surveillance of employees' activity immediately upon learning of the organizational campaign'' (id. at 1515). The Board concurred with his finding that this was unlawful, and the Court of Appeals for the Fifth Circuit specifically agreed (715 F.2d at 1025).

The credited evidence in this case shows that all of the factors relied upon by the Board and the court of appeals in the cited cases are present here. Thus, the supervisors engaged in ''following'' and ''watching'' employees in work areas more frequently after the campaign began. They entered the smokers during break periods more frequently during the campaign. On one occasion a supervisor ''broke into'' a conversation between employees. All of the employees thus monitored were union adherents, and there is no evidence that employees favoring the Company were treated in the same manner. The most bizarre of this atypical behavior was the presence of supervisors outside the ladies' restroom. Although this seems difficult to believe, two different current employees testified that it took place on two different occasions.

Respondent cites a number of cases which, it argues, show that there was nothing unlawful in its supervisors' conduct.[94] In the *Well-Bred Loaf*, 303 NLRB 1016 (1991), supervisors began appearing in sections where the principal union organizer was working, prior to an election. The judge considered the organizer's testimony to be ''too vague and subjective'' (id., 303 NLRB at 1018). Several supervisors began to eat lunch in the lunchroom, and attempted to persuade the employees to reject the Union. However, one supervisor had regularly eaten lunch there and, relying on this fact, the judge dismissed the allegation (id. at 1019). This case is distinguishable because of the vagueness of the union organizer's testimony, and the fact that the supervisors' eating in the lunchroom was not a departure from prior practice. Although the General Counsel filed exceptions to the judge's findings,

[94] R. Br. 113–132.

the record does not reveal whether they included an exception to the dismissal of this allegation.

In *Olympic Plastics Corp.*, 266 NLRB 519, 532–533 (1983), one witness testified that one supervisor appeared at the employee's work station more frequently after the employee's appearance at an NLRB hearing, but was not specific as to how long he was there before or after the hearing. This case does not present the quantity and variety of evidence presented in the case at bar. Other cases cited by Respondent are similarly inapposite.[95]

The wealth of consistent detail revealed by the evidence in support of this section of the complaint must be considered in the context of Respondent's other conduct. That conduct consisted of a broad range of unfair labor practices, Respondent's intense animus against the Union, and its determination to defeat it. The Board has explicitly stated its position on the issues presented here in *K-Mart Corp.*, supra, and the Court of Appeals for the Fifth Circuit has agreed in its enforcement of *Intermedics, Inc.*, supra. I conclude that, by the conduct enumerated above, Respondent unlawfully engaged in, and created the appearance of, surveillance of its employees' union activities in violation of Section 8(a)(1) of the Act.

T. *The Alleged Threat that an Employee Would Be Watched More Closely Because of His Union Activities*

1. The evidence

Elboyd Deal testified that James O'Kelly told him on June 17 that he, O'Kelly, had just been at a management meeting, that management believed that Deal had written letters to the ''right higher ups'' in the Union, and that Deal was a ''ringleader'' in bringing the Union back to the plant. Management considered Deal to be a ''snake in the grass.'' Supervisors were to ''watch'' Deal, and watch what they said around him.

O'Kelly admitted that Deal was discussed in management meetings, but denied that he ever said anything about this to Deal.

2. Factual conclusion and legal conclusion

In light of the verbosity of the many conversations between Deal and O'Kelly, and the fact that Deal was a more credible witness, I credit his testimony. I further conclude that O'Kelly's statement constituted an unlawful threat to engage in surveillance of Deal's union activities, in violation of Section 8(a)(1) of the Act.

[95] In *St. Anne's Hospital*, 245 NLRB 1009, 1014 (1979), the evidence disclosed only that a supervising nurse observed two nurses' treatment of patients. In *Honda of Mineola*, 218 NLRB 486 (1975), the Board noted that there was no evidence that the presence of supervisors in a small shop was not customary, nor that their observance of the employees was related to their union activity. *Uniontown Hospital Assn.*, 277 NLRB 1298 (1983), pertains to open leafleting on the employer's premises. In *City Products Corp.*, 251 NLRB 1512, 1518 (1981), a supervisor's looking through an employee's file folder was deemed ''too general'' to warrant a finding of unlawful surveillance.

U. *The Alleged Restriction of the Movement of Union Supporters*

1. Terry Burris

a. *The evidence*

Drenia Smith testified that there is a telephone in the towel sewing department, where she works, and that it is in the canteen ''half a block'' away. There is a telephone about 100 feet away in the nearby crafts department, which Smith customarily used. In early August, Burris asked Smith whether she had used this telephone, and, upon her affirmative answer, told her not to use it again. Smith asked whether this restriction applied only to her, and Burris replied that he would give the same instruction to other employees. Smith later saw other employees use the crafts department's phone.

Burris agreed that he gave these instructions to Smith, and contended that he gave the same instructions to all of his employees, 40 to 45 according to his estimate. The reason, Burris stated, was that he ''wanted to be able to find somebody in case of an emergency.'' Nobody violated his order, to his knowledge.

Respondent's witness Tammy Lingerfelt testified that the employees had customarily used the crafts department's telephone, because it was closer, and because there was frequently a line at the telephone in the canteen. The employees did this both on breaks, and at other times. Lingerfelt contended that Burris instructed her not to use the crafts department's phone. However, she ignores this instruction, and ''sneaks'' over two or three times per shift. ''All'' the employees, 50 to 60 according to Lingerfelt, used the same phone. None of these violations has been detected by Burris, despite the fact that he spends a ''good amount of time on the work floor.'' The other employees wait until Burris has left the floor, and then go to the crafts department's telephone. Despite this narrow window of opportunity for use of the phone, no one else is ever there when Lingerfelt ''sneaks'' out to use it.

b. *Factual conclusion*

Lingerfelt's testimony that as many as 60 employees go to a telephone whose use has been prohibited, during break and worktime, without the knowledge of a supervisor who spends a ''good amount of time'' on the floor, is highly improbable. Her further testimony that the employees wait until the supervisor has left the floor and then go to the telephone, but that it is never busy when Lingerfelt goes there, is a logistical impossibility. I reject Lingerfelt's attempted corroboration of Burris.

Burris' rationale for the order—to be able to reach employees during an emergency—was better served by their use of the closer telephone in the crafts department. It is highly improbable that all of his employees continued to violate the purported order without his knowledge. I do not credit Burris' testimony, and conclude that the only credible evidence is that he imposed the telephone restriction on Drenia Smith, a union supporter.

2. Ted Godfrey

Jerry Love, a union supporter, worked on the second floor of the towel bleachery department, which covered three

floors and which was supervised by Ted Godfrey. Love testified on cross-examination that the Company's policy was to have the employees take breaks on the floor where they worked. However, this policy was not enforced, and for at least 6 months, Love took breaks on the first or third floors, where he talked with friends without objection from Godfrey. On August 16, Godfrey said to him: ''As of now, you are not allowed to go to the first and third floors.'' A few days later, Love asked Godfrey why he had imposed this restriction. Godfrey replied that Love ''would have influence'' on the people he was visiting.

Imelda Kay Wagner, also employed in the towel bleachery department on the second floor, was observed by Godfrey while signing a union card. He told her that he was surprised. Wagner's practice had been to go to other employees on the other floors and solicit donations for a flower fund during the employees' working time. There was no objection from Godfrey. In August, the supervisor told her that she had to remain on the second floor. After the election, Wagner resumed her former practice of visiting the first and third floors.

Love's and Wagner's testimony was unrebutted, and is credited.

Respondent argues that no evidence was presented to show that any other employee was allowed to leave his floor, and ''the only inference that can be drawn is that all employees were told to remain on their respective floors.[96] In the absence of any evidence, I make no such inference. All the evidence shows is that two union adherents were restricted to the second floor in August, and that this restriction was lifted after the election.

3. Diane Hartis

a. *The evidence*

Joanne Diggs had originally worked as a hemmer, but, about 9 months before the advent of the union campaign, became an instructor on the folding machines at a higher rate of pay.

Diggs was on vacation when the union campaign began. After she returned, she made statements favoring the Union in the smoker during a break. Supervisor Hartis was present. The next day, Hartis informed Diggs that she was to return to her former job as a hemmer.

Respondent had fitted sheet and flat sheet departments. Beginning in about August 1990, the Company began cross-training employees between these two departments. Respondent proffered evidence that this caused problems among employees, and high turnover. Thus, Supervisor Tammy Fox testified that she complained about cross-training in January 1991. Nothing was done about it, however, until June of that year. In the first week of June, the Company formed a corrective action team, which recommended the elimination of cross-training. Only employees who were folders were to remain as instructors, while others were to be returned to their original jobs. Acting on orders from Department Manager Eddy Raper, Hartis reassigned Diggs to her former job as a hemmer. Diggs did not have the same amount of contact with employees thereafter. Two employees who did not openly support the Union were retained as instructors, according to Diggs. Lisa Aycock, Respondent's director of training, corroborated Diggs.

Raper testified that he decided to reassign Joanne Diggs to her former position as a hemmer[97] because the Company was going to use qualified folders to train new employees. However, Supervisor Hartis testified that Diggs in fact had been ''certified'' as a folder. Hartis did not inform Raper of this fact. Raper agreed on cross-examination that Diggs knew how to be a folder. He also agreed that his folders were just as busy as his hemmers.

b. *Factual conclusion*

Diggs was reassigned back to her former job, at a lower rate of pay and with less access to other employees, the day after she announced her support of the Union. Respondent argues that it was simply carrying out a business decision that it had been made ''long before any union activity began.''[98] In fact, the union campaign began just a few days after the Company's action terminating cross-training. Elboyd Deal, the ''ringleader'' according to O'Kelly, had been wearing his own union insignia for a month. Diggs' reassignment took place after the advent of the campaign.

Respondent's reasons for selecting Diggs for reassignment are not supported by the facts—she was qualified as a folder, which Hartis failed to tell Raper, and the Company had just as much need for folders as it did for hemmers. The Company announced that it was going to use folders to train new employees, and Diggs was qualified. In light of these obvious inconsistencies, I reject Respondent's business defense.

At the hearing, counsel for the General Counsel announced her intention to seek a make-whole remedy for Diggs' reassignment. Respondent notes this without comment.[99]

4. Frank Goforth

a. *The evidence*

Terry Smothers, a current employee, was a spinning frame technician, or ''fixer,'' on the second floor. He worked with two other fixers on the same floor, Margie Wolfe and Danny Jacobs. He testified that they helped each other. Smothers also affirmed that he went to the third floor on occasion to assist in repairs or to get parts.

Smothers was the husband of union activist Sherry Smothers. Smothers himself began supporting the Union in mid-July. He testified that his wife wrote an article in a local newspaper supporting the Union. The next day, Supervisor Charles Lentz told him that he could no longer attend employee meetings, because of his wife's article. Supervisor Goforth told him that Plant Manager M. D. Ford said that Smothers was no longer to help the other fixers on the second floor, and was not to go to the third floor. Goforth sent ''somebody else'' for the parts. Thereafter, Smothers observed the other two fixers going to the third floor. After the election, the restriction was lifted, according to Smothers.

Marie Wolfe, a witness for Respondent, testified that Smothers helped her on occasion. She believed that he did so once during the summer of 1991, but was uncertain about the date, i.e., before or after the election. She did not know

[96] R. Br. 142.

[97] Raper called the job ''fitted sewer.''

[98] R. Br. 147.

[99] R. Br. 142 fn. 21, 144–148.

of any restriction which Goforth had imposed on Smothers' movements. On cross-examination, Wolfe said that Smothers went upstairs during the union campaign ''one time and had some kind of incident.'' Thereafter, he ''stayed on his job pretty good.''

Danny Jacobs, called by Respondent, testified that Smothers helped him at his job, but could not recall any specific instance from mid-July through August. In the same time frame, Jacobs could not recall whether Smothers went upstairs to get parts. He denied that Goforth ever asked him to get parts for Smothers.

Goforth asserted that Smothers exceeded his break periods. He testified that he had two conversations with Smothers about this issue. In the first one, he told Smothers that he could go to the third floor to have lunch with his wife, but that the break period did not exceed 20 minutes. In the second conversation, after finding Smothers on the third floor talking with another employee, Goforth told him that he could not play hide and seek with him. Goforth did not issue a written warning to Smothers. He denied asking Wolfe, Jacobs, or anybody else to get parts for Smothers on the third floor, and denied restricting Smothers from going to the third floor.

Lentz denied talking to Smothers about his wife's newspaper article, and M. D. Food denied telling Goforth to restrict Smothers from going to the third floor, or telling Lentz to exclude Smothers from employee meetings.

b. *Factual conclusions*

Wolfe and Jacobs do not contradict Smothers' testimony that he was barred from helping them from mid-July—when Smothers openly supported the Union—until the election in August. Neither Wolfe nor Jacobs could recall the precise dates that Smothers did help them. Both worked on the second floor, and no technician who worked on the third floor was called to testify about this matter—Smothers did testify that he occasionally did repairs on the third floor.

Neither Wolfe nor Jacobs knew whether Goforth had specifically barred Smothers from getting parts on the third floor. Although both denied that Goforth asked them to get parts for Smothers, the latter testified that Goforth got ''somebody else'' to do so.

Accordingly, neither Wolfe nor Jacobs directly contradicts Smothers. In fact, Wolfe's testimony that Smothers stayed pretty close to his job during the union campaign after an ''incident'' that took place on the third floor tends to corroborate Smothers.

Although M. D. Ford denied that he told Goforth to restrict Smothers' movements, and Goforth denied most of the statements attributed to him by Smothers, he did not deny that he told Smothers that Ford had ordered Smothers' movements restricted. Although Lentz denied telling Smothers that he could no longer attend employee meetings, there is abundant evidence in the record—some from Sherry Smothers—that the Company did bar prounion employees from attending employee meetings.

Smothers was a witness testifying against his own employment interest. I credit his testimony.

5. Don Moose

The facts

This allegation involves another conversation between Moose and Peggy Jordan, and concerns the Company's policy on breaks. Jordan testified that there are certain time periods designated as break periods, but that these periods were not strictly observed. As long as she maintained production, she could go on break whenever she chose, without objection. There is ample evidence to support this view, including testimony from Supervisor Moose.

Jordan testified that, in late June, she and another employee were leafleting at the gate. Moose drove through and shook his finger in their faces. The next day, Jordan went to the canteen for a minute to speak with a lady. When she came out, Moose asked her whether she was on break, and Jordan replied, ''No.'' Moose said that he knew her views about the Union, and did not want to argue with her, but that she had to stay on her job. This was the first time any such statement had been made to her.

Jordan testified that she saw another employee, Diane Baker, visiting another employee for an hour and 15 minutes. According to Jordan, Moose knew that Baker was away from her job. Baker wore a Vote No T-shirt.

Moose agreed that he told Jordan that she had to be on her job, despite the fact that she was maintaining production. He also agreed that he said nothing to Baker about the same subject. Moose described the break periods, but then affirmed that, if an employee's production is kept up, she can go to the canteen. He denied being Diane Baker's supervisor, but agreed that she could have stayed away from her job only ''a very short period of time'' without affecting production.

I credit Jordan, and conclude that Respondent allowed employees to go on break as long as production was maintained. I do not credit Moose's denial of knowledge of Baker's absence for 1 hour and 15 minutes, which must have affected production.

6. Jeff Luck

a. *The evidence*

Sherry Anthony worked in section 1 of the towel packaging department. During the first week of the campaign, she told employees at a lunchbreak that she was 100 percent for the Union. Supervisor Mable Osborne was nearby.

Anthony testified that employees customarily took their breaks in other sections of the department, if they wished to do so. The same night that Anthony announced her support of the Union, or the following night, Luck told her that she could not leave section 1 to take a break. Anthony thereafter observed section 1 employees Kevin Fite and Robert Neal taking breaks in section 3. They both opposed the Union, according to Anthony.

To ''test the waters,'' Anthony then took a break in section 2, but Luck told her to return to section 1.

Luck maintained that, prior to the union campaign, he required employees to take breaks in their own section. Asked on what occasion he did this, Luck's testimony was evasive. He contended that the reason was to make production flow smoothly. Luck asserted that he repeated this instruction individually to each employee after the campaign began. The

reason was a personality conflict between two employees, whose names Luck could not recall.

b. *Factual conclusion*

Luck's testimony was evasive and unlikely, while Anthony was an employee testifying against her own interest. I credit her testimony, and conclude that Luck ordered her to take her breaks in section 1, while allowing other employees to go elsewhere.

c. *Legal conclusion*

Based on Respondent's intense antiunion animus and the fact that the restrictions outlined above were applied only against known union adherents, I conclude that Respondent imposed them in retaliation for the employees' union activities and in order to restrict their access to other employees, in violation of Section 8(a)(1) of the Act. *Standard Products Co.*, 281 NLRB 141, 142 (1986), enfd. in part 824 F.2d 291 (4th Cir. 1987); *Sealectro Corp.*, 280 NLRB 151 (1986).

V. *The Alleged Restriction of Prounion Employees to Their Work Areas While Simultaneously Permitting Procompany Supporters to Leave Their Work Areas*

This allegation appears to be almost the same as the prior one. In any event, the General Counsel advances new evidence.

1. Percy Smith

The General Counsel submits Smith's statement to Tim Honeycutt, on about August 14, that Smith did not want Honeycutt off his job, together with the fact that Honeycutt's job took him to other departments, and that this restriction had never before been imposed on him. I have already made this finding.[100]

2. Diane Neely

a. *The evidence*

Brenda Harrell was a forklift operator in the pillowcase department, under Neely's supervision. Harrell gave out leaflets at the gate, and wore union insignia.

Harrell's job required her to travel to different areas of the plant, including the packaging department which she visited about five times daily. Harrell customarily talked to employees during these visits, without objection.

Harrell affirmed that Neely told her in mid-July that the packaging supervisor, Don Beaver, had complained to Neely that Harrell was talking to Beaver's employees too long.

One of the employees with whom Harrell customarily spoke was Mary Knox. In late July, while performing her duties, she talked with Knox for about a minute. Neely came out of her office and told Harrell to get back to work.

Harrell also testified that Connie Dellinger, who wore a Vote No T-shirt, visited with her friends in the pillow case department every day for 30 minutes, with Neely's knowledge. Cynthia Hanes, a current employee under Neely's supervision, testified that Dellinger ''would come in anytime she wanted to and stay as long as she wanted to . . . talk against the Union all she wanted to.'' Dellinger did this every day during the campaign, and Neely ''knew she was there.'' Martha Barrineau, a fill-in supervisor for Neely called as a witness by Respondent, testified that Dellinger regularly came to talk to a friend in the department. ''She always has and still does.''

Neely acknowledged that she spoke to Harrell about Beaver's complaint, and stated that she did so once again during the campaign. Neely did not deny her admonition to Harrell to stop talking to Mary Knox, nor deny that Harrell had customarily done so. Neely agreed that she did not say anything to Dellinger about the latter's visits to the pillowcase department. The reason, Neely contends, was that Dellinger was not her employee. However, Neely maintained, she spoke to Dellinger's supervisor about the matter.

Dellinger admitted that she visits the pillowcase department, but contends that she does so for no more than 15 minutes, without Neely's knowledge.

b. *Factual discussion and conclusions*

Harrell's testimony that Neely told her she was spending too much time talking to other employees is admitted by Neely, and Harrell's testimony that Neely terminated her short conversation with Mary Knox is unrebutted.

As for Dellinger, the evidence, including Dellinger's admission, establishes that she did and still does spend considerable time in Neely's department talking to employees. Dellinger was antiunion. Respondent's position that Neely did not know about Dellinger's visits is unbelievable. Why would Neely have complained to Dellinger's supervisor if she did not know about Dellinger's presence?

I conclude that Neely told Harrell that the latter was spending too much time talking to employees in other departments and ordered her to end one conversation, but did nothing to restrict an antiunion employee from doing the same in her own department.

3. Diane Hartis

a. *The evidence*

Sylvia Crawford, an open union supporter, testified that one of her duties prior to the union campaign was to give tours of the fitted sheet department to new employees. She would talk with them and also with regular employees during these tours. She had done this for about 2 years prior to the union campaign. After it began, Supervisor Hartis took this duty away from Crawford, and performed it herself. After the campaign was over, Hartis returned the duty to Crawford, without comment.

Hartis testified that Crawford did the tours only when Hartis did not have time to do so herself. Crawford's tour duties were ''sporadic.'' Hartis could not remember specifically when she asked Crawford to conduct the tours.

b. *Factual conclusions*

Crawford's recall of her tour duties was superior to Hartis'. She was a current employee testifying against her own interest, and I credit her testimony.

[100] Supra, sec. II,A,5.

4. Tangie Safrit and Joan Gulledge

The evidence in support of this allegation is related to that concerning the alleged discriminatory warnings to Patricia Boone, and is considered hereinafter.[101]

Legal conclusions

The foregoing conduct was unlawful for the same reasons given in the preceding section.[102]

W. *The Allegation that Respondent Created the Impression Among Its Employees that Their Union Activities Were Being Surveilled*

This allegation is similar to that in sections S and T.

1. James O'Kelly

In support of this allegation, the General Counsel submits the same evidence as that in support of section II,T of the complaint.[103] I have already concluded that O'Kelly's statements were unlawful.

2. Diane Hartis

The General Counsel submits the same evidence as that considered in section II,S,4.[104] I have already concluded that Hartis' statements and actions were unlawful, for the reasons given in section S.

3. Bobby Fowler

The General Counsel submits the same evidence of Fowler's conduct which was presented in connection with allegation II,S,7, which I have already found to be unlawful.[105]

4. Jeff Luck[106]

The General Counsel offers the same evidence which I have already considered in section S above. I have already concluded that Luck's conduct was unlawful.

X. *The Allegation that Respondent Told Its Employees that, if They Selected the Union, Bargaining Would Start from Scratch*

1. Jim Perkins[107]

a. *The evidence*

Patricia Boone had written a letter to employees which compared benefits at the Company's unionized plant at Fieldale with those at its Kannapolis plant. Respondent objected to some of the statements made in the letter.

Thereafter, on August 19, Perkins and Boone had a conversation which lasted about 45 minutes. Perkins told Boone that the benefits at the union plants were the same as at the nonunion plants. He asked Boone why the Company needed a union. Boone replied that the employees had been ''done dirty'' by the Company, that their wages had been cut, and that they should stand up for what they believed. Perkins replied that the Union could not help the employees, and that, if Boone had a problem, she could always come to the Commune and it would do its best to solve the problem. Perkins further stated that he had two troublemakers who had transferred into his department, and that Boone was one of them.

Boone testified that Perkins said that bargaining would begin from scratch, and that the employees ''would,'' or ''could,'' lose the benefits they had.

Boone was wearing union buttons at the time, and Perkins said that he would like to see her take them off. Boone declined, and Perkins replied that he hoped she would take them off and begin supporting the Company.

Perkins testified that he told Boone that the Company had a problem solving procedure which the employees could utilize. He affirmed that he said that during bargaining everything would be put on the table, and nothing would be left out. Perkins did not recall using the term ''bargaining from scratch.''

Perkins agreed that he asked Boone to take off her union buttons, and that she declined.

b. *Factual analysis*

There is little conflict in the evidence. Where there is, I credit Boone rather than Perkins. She was an impressive witness with good recall of the events.

2. Charles Shuping

a. *The evidence*

Wendy Ashcraft testified that she attended an employee meeting on August 7, in which she asked Department Manager Charles Shuping when bargaining would begin, and he replied:

> Bargaining would start from the scratch and everything would be drawn on the table. That the employees could lose their benefits, their rate of pay—it could be going down; our pay rates could be going down, and that if the Union did, in fact get in, that there would not be no raises for us . . . anytime in the near future.

Ashcraft testified that she asked whether it was legal for Shuping to say this, and referred to a Board notice allegedly posted by Respondent after a prior election, in which Respondent promised not to say anything about bargaining from scratch. According to Ashcraft, Shuping replied that those rules did not apply to him at that time.

Wayne Linton testified that he attended an employee meeting in early August at which Charles Shuping spoke. Shuping showed a film about a company called ''Suzy Curtains,'' at which the employees were unable to get a contract. Shuping stated that even if the Union came in, the Company would start bargaining from scratch, that other companies would not want to do business with Respondent, that it could

[101] Infra.
[102] Supra, sec. II,U.
[103] G.C. Br. fn. 94 p. 173.
[104] G.C. Br. 46–50.
[105] G.C. Br. 12.
[106] The complaint erroneously gives Luck's first name as ''Jerry.''
[107] Perkins is not alleged as a supervisor in the complaint. He stated that he was retired at the time of his testimony, but that he was the plant manager of the washcloth fabrication department when employed. I conclude that he was a supervisor within the meaning of the Act.

start losing orders, and that the employees could lose the benefits that they had.[108]

Shuping testified that he spoke about bargaining at employee meeting and said that bargaining would begin at ground zero, and may have said that bargaining began from scratch. Everything would be on the table, and employees were not guaranteed more or less than they had.

Shuping denied saying that the law or rules did not apply to him, but admitted that an employee showed him a notice from a prior Board proceeding.

b. *Factual conclusions*

Ashcraft and Linton were credible witnesses and were partially corroborated by admissions from Shuping. I find that he made the statements to employees, attributed to him by Ashcraft and Linton, on about August 7.

3. Ozzie Raines[109]

The facts

The General Counsel introduced a videotape of a speech made to employees, about 2 weeks before the election, by Ozzie Raines, Respondent's vice president for human resources.[110]

Raines opened his discussion of bargaining by stating that in 40 years of negotiations, the Union had not obtained higher wages for its members, and, in fact, the wages at the Cannon (nonunion) plants were a ''little higher'' than at the unionized plants. (At the time of Raines' speech, the wage rates of union and nonunion employees were actually uniform, as shown in the refusal-to-bargain discussion, infra.) As for work loads, the unionized employees were expected to perform at ''higher levels'' than nonunion employees. The Union had not been able to provide job security for its members, since five unionized plants had been closed in recent years ''for economic reasons,'' and the number of union employees had been reduced by one-third.

Raines went on to say that the Union had committed objectionable acts during the election, that the Company would challenge the election if the Union was victorious, and ''tie up the Union in court for as long as it takes.'' Such litigation can take 2 to 3 years, and there would be no bargaining while it was going on.

As for bargaining, Raines stated that the employees could throw away ''the little blue book'' (the contract at its unionized plants), since the parties would start with a ''clean sheet of paper.'' The only thing the Union would have won would be the right to sit down at a table and ''ask.'' ''The Company's obligation would be to bargain in good faith, which we would do. That does not mean that we have to agree or would agree to anything the Union asked for. The Company has an absolute legal right to say 'No' to any and every demand the Union makes. This is the law.''

Raines stated that the benefits the employees enjoyed could be traded away in bargaining, which was a ''two-way street that cuts both ways.'' The Union wanted $1.5 million in checkoff, and there was ''no limit'' to what they would trade away to get it. ''What they have to trade away belongs to you.

Raines cited various legal decisions to support his statements.

4. Harold Roseman

Eric Strickland testified that Plant Manager Roseman made a speech about bargaining in August. Roseman said that the Union was saying that bargaining would begin from the ''point'' where the employees were then, but that this was not true. Bargaining would begin from scratch. The Company was required to bargain in good faith. Roseman showed a transparency which showed current benefits, and asked the employees which one they would be willing to give up in order to get a contract.

Legal analysis and conclusions

Respondent argues that these various statements did not say that benefits would automatically be taken away from employees during bargaining, but merely advised them that they could end up with more, less, or the same benefits as a result of the bargaining process.[111]

The Court of Appeals for the First Circuit has reviewed and compared a large number of the Board's decisions in ''bargaining from scratch'' cases. *Shaw's Supermarkets v. NLRB*, 884 F.2d 34 (1st Cir. 1989), denying enf. 289 NLRB 844 (1988). The court distinguished cases in which the Board found no violation, because the employer did not engage in regressive bargaining,[112] with cases in which it did find a violation.[113]

Among the factors leading to a finding of a violation, the court noted that the statement in issue followed discrimination against the principal union activist;[114] language constituting an express threat that bargaining would begin after the employees' wages had been ''knocked down;[115] and the fact that other unfair labor practices had been committed (884 F.2d 35).

The facts in this case indicate that Respondent made unlawful statements. Raines told employees that, after 40 years of bargaining, unionized employees had lower wages than nonunion employees, and were required to perform at higher

[108] On cross-examination, Linton agreed that his attribution of a bargaining-from-scratch statement to Shuping was not contained in his pretrial affidavit. Linton testified that he said this to the Board agent, but that the latter did not write it down. I credit his explanation.

[109] The complaint was amended at hearing to contain an allegation concerning Ozzie Raines.

[110] G.C. Exh. 26.

[111] R. Br. 169–178.

[112] The court cites *La-Z-Boy*, 281 NLRB 338 (1986); *Histacount Corp*., 278 NLRB 681 (1986); *Clark Equipment Co*., 278 NLRB 498 (1986); *Campbell Soup Co*., 225 NLRB 222 (1976); *Ludwig Motor Corp*., 222 NLRB 635 (1976); *White Stag Mfg. Co*., 219 NLRB 1246 (1975); *Computer Peripherals, Inc*., 215 NLRB 293 (1974); and *Wagner Industrial Products Co*., 170 NLRB 1413 (1968). To this list Respondent would add *Bi-Lo*, 303 NLRB 749 (1991); and *Baton Rouge General Hospital*, 283 NLRB 192 (1987). R. Br. 178.

[113] *Beverly Enterprises-Indiana*, 281 NLRB 26 (1986); *Mississippi Chemical Corp*., 280 NLRB 413 (1986); *Belcher Towing Co*., 265 NLRB 1258 (1982), and *Plastronics Inc*., 233 NLRB 155 (1977).

[114] *Beverly Enterprises-Indiana*, id. As found hereinafter, Respondent unlawfully discriminated against its employees beginning in May, and continuing through June, July, and August—prior to many of the allegedly unlawful bargaining-from-scratch statements.

[115] *Mississippi Chemical Corp*., supra, fn. 106.

work levels. There was ''no limit'' to what the Union would trade away in employee benefits in return for checkoff, and it had not been able to protect its members' job security.

This statement in effect says that union victory would not result in higher wages and better working conditions and that, in fact, the Respondent's past practice had been to treat its unionized employees less favorably than its nonunion employees.

In a case where the employer stated that it would continue to grant the same benefits irrespective of the potential unionization of a plant, the Board agreed that in the context of other unlawful conduct, this statement

> clearly conveyed that union representation for the [nonunion] employees would be a futility for in no event would union representation result in any different conditions than the other named plants, whose employees were not represented by a union. [Authorities cited.]
>
> . . . .
>
> Consequently, by stating in effect that Respondent would not grant unionized employees more than it was willing to give to its unrepresented employees, Respondent was coercing its employees to reject the Union in violation of Section 8(a)(1) of the Act. [*Electric Hose & Rubber Co*., 262 NLRB 186, 215 (1982).]

Raines' statements went beyond those in *Electric Hose & Rubber*. He clearly implied that, on the basis of past company practice, unionization would result in lower wages and higher performance standards. This was coercive for the reasons stated above.

Shuping's statements also went beyond a dispassionate description of the bargaining process. If the Union won, wages could be going down, and there would be no raises in the near future. Shuping thus flatly predicted that the employees would not have a pay raise if they selected the Union. This is not saying that wages could go up, down, or remain the same.

Shuping's further statement that a prior Board ruling did not apply to him suggested to employees that Respondent could flout Board rulings with impunity. Since employees look to the Board for protection of their rights, this was an ominous statement of Respondent's position, and was coercive.

Roseman's asking employees which benefits they would be willing to sacrifice in return for a contract clearly implied that there would be no contract unless they did make a sacrifice. This is more than a bland dissertation on the vagaries of bargaining, since it shows that sacrifice of benefits was imperative for a contract.

To the same effect was Mike Bumgarner's statement that the employees would have to lose something to obtain a benefit, and Perry Harkey's that the employees could lose everything and start from nothing.[116] I conclude that Raines', Shuping's, Roseman's, Bumgarner's, and Harkey's statements were unlawful. I also conclude that Jim Perkins' statement—that the employees *could* lose the benefits they had—was not unlawful.

[116] Supra, secs. II,C,1 and 3.

Y. *The Allegation that Respondent Advised Its Employees that It Would Be Futile to Select the Union*

1. M. D. Ford

a. *The evidence*

Sharon Davis, a current employee, attended about three employee meetings conducted by Plant Manager M. D. Ford. She testified that Ford, at one meeting, responded to an employee question by saying that he did not know when employees would get a raise. If the Union came in, it would be taken to the bargaining table, and this did not mean that the employees would get a raise, because the Company did not have to bargain in good faith. An employee said that the Company had to bargain in good faith, and Ford replied that it ''would not, if it chose not to.'' On cross-examination, Davis agreed that Ford said that the employees could end up with more or less, but repeated her testimony about Ford's statement on good faith. The transcript reads:

> Q. And you say he said that the Company would not have to bargain in good faith. Did he—is that the word he used ''in good faith?''
>
> A. That's exactly the words he used.

Ford testified that he had been involved in three union campaigns including the one in 1991. He affirmed that he conducted numerous meetings with employees during the (1991) campaign. One of these concerned bargaining. Ford used a ''book'' about ''NLRB law'' which had been given to him, ''overheads,'' and information obtained from management.

Ford agreed that employees asked questions at this session, but could not remember the questions or his answers. He did not have the ''book'' he used, nor did he have any notes.

Personnel Manager William Drumm testified that he attended an employee meeting in which Ford discussed bargaining. According to Drumm, Ford used overhead ''transparencies'' which described the bargaining process, and based his discussion on these.[117] Drumm contended that Ford told employees about the bargaining process, and denied that he said the Company would not bargain in good faith. On cross-examination, Drumm admitted that Ford did not use the transparencies as a written speech, but rather, as a guide to the subjects being discussed.

b. *Factual analysis*

Respondent argues that Davis' testimony is ''blatantly incredible.'' It is improbable that a corporate executive with Ford's experience in labor relations would say that the Employer did not have to bargain in good faith.[118] Respondent also points to Drumm's corroboration of Ford, and the as-

[117] R. Exh. 141.

[118] R. Br. 182–183. Respondent cites *Perth Amboy Hospital*, 279 NLRB 52, 55–56 (1986). In that case, the General Counsel's witnesses testified that the employer's president, at coffee following an employee meeting, said that an employee was dreaming if he thought that the employer would bargain in good faith. The company president denied this, and gave his own version of the conversation. The administrative law judge credited this denial, for the reasons stated in his decision.

serted fact that there is nothing unlawful in the ''transparencies.[119]

This argument is not persuasive. Careful examination of Ford's testimony does not indicate that he was as experienced in labor law as Respondent asserts. He had simply participated in two campaigns prior to the one in 1991, but the extent of his participation is not indicated. He relied upon a ''book'' about the law given to him by management, other information, and the ''transparencies.'' The statements in the latter are not determinative, because Drumm admitted that Ford did not use the transparencies as a written speech. Thus, the ''book'' is not available, there are no notes, and the contents of the transparencies are of minor relevance. There are only the testimonies of Ford and Drumm about statements that the former made to employees, and their denials of Davis' testimony.

Davis' testimony is detailed. Thus, Ford's asserted statement that the Company would not bargain in good faith was made in a discussion about wages, and was repeated when an employee challenged this assertion. Davis emphatically reaffirmed her testimony on cross-examination. Ford, on the other hand, admitted that employees asked questions, but could not remember the questions or his answers.

It is obvious that Davis had superior recall of employee questions and Ford's answers. She was a current employee testifying against her own interest and was a credible witness. I credit her testimony that Ford told employees that Respondent did not have to bargain in good faith if it chose not to do so.

2. Michael Myers

a. *The evidence*

Sylvia Walter testified that she attended an employee meeting in early August, at which M. D. Ford, Department Manager Tim Adams, and management trainee, Michael Myers, were present. Walter affirmed that she asked Ford why some employees were not allowed to attend the meetings. Ford denied that any employees were barred, but stated that some were asked not to attend, since there was little possibility of changing the minds of ''union pushers.''

Walter returned to her job after this meeting. She testified that Myers and Adams approached her and asked whether all of her questions had been answered. She replied, ''No,'' and said that Ford had been ''smart'' with her. Walter asked the supervisors about shop stewards, and a discussion of this subject took place. According to Walter, she did not ask any more questions, but Myers and Adams started talking about bargaining. They told her that ''the employees would lose something in the process of getting something for the Union.'' The supervisors added that the Company ''didn't have to give you anything if they didn't want to—that it was up to them.''

Myers asserted that Walter asked a question about bargaining, and that he told her that it was a ''give and take'' procedure, where ''you could gain some things but you could also lose some things.'' He told her that the Company did not have to agree to anything, and that the bargaining process could take years. He denied telling her that the employees would have to give up something in order to get something; rather, ''it would be a matter of whether it was bargained away.'' Department Manager Adams gave similar testimony.

b. *Factual analysis*

Walter was a more believable witness than Myers and Adams, and I credit her testimony.

3. Terry Burris

The facts

Current employee Drenia Smith testified that Burris started talking about the Union on about June 18. He said that there would be a lot of conflict if the Union came in, and friendships would be lost. There would be nothing but trouble, ''people would fire bomb'' employees' houses, and there would be strikes. If an ''Oriental'' crossed a picket line, ''they'd get beat up.''

Burris admitted having a conversation with Smith in which he said that ''trouble'' seems to follow unions, that friendships are lost, and violence ensued. It was ''possible'' that he told Smith that he had seen news reports of ''people fire bombing houses and causing violence.'' Many businesses experienced ''trouble'' when they had strikes. He had one ''Oriental'' employee in his department.

I credit Smith's testimony as corroborated by Burris.

4. Zell Ballou

a. *The evidence*

Current employee Benny McIntyre testified that Supervisor Ballou gave him a leaflet in mid-August showing a plant with locked gates.[120] McIntyre affirmed that Ballou told him that the leaflet showed what could happen if the employees voted the Union in, that the Company would not negotiate with the Union, that negotiations were ''just talk,'' and that nobody could force the Company to do something it did not want to do.

Ballou agreed that she gave out leaflets to employees, and talked to them about the leaflets. Asked whether she ever talked to McIntyre about the leaflets, Ballou replied that she sometimes did, and sometimes did not—McIntyre had already ''made it plain that he was for the Union and he would not change.'' Ballou admitted giving General Counsel's Exhibit 2 to McIntyre, but denied talking to him about it. On the other hand, she affirmed telling McIntyre that the Union could not make the Company do anything—that it could only negotiate.

b. *Factual analysis*

McIntyre's testimony is more plausible than Ballou's garbled statements interspersed with partial admissions. McIntyre gave testimony against his interest, and I credit the statements he attributed to Ballou.

[119] Id.

[120] The leaflet shows a gate locked by a padlock. At the top of the leaflet is the question, ''What do Fieldcrest Cannon's bedspread Mill and Sheeting Mill in Eden have in common?'' Beneath the picture is the answer: ''Both plants were unionized by ACTWU. Both plants were closed due to economic conditions. Union dues didn't buy job security.'' G.C. Exh. 2.

5. Buck Reese and Harold Roseman

a. *The evidence*

Current employee Peggy Jordan testified that she attended an employee meeting in late July which was conducted by Reese and Roseman. Employee Mel Kramer asked what would happen if the Union were voted in. Reese replied that the Union would not get voted in, and that the Company would do everything legally possible to keep it out. If it did come in, the employees would not get what the Union wanted for them. The Company would bargain from scratch, and the employees would probably lose the benefits they already had. The Company would not bargain for a contract, and would tie up the Union in litigation for years. ''He said,'' Jordan averred, ''that we would never get a contract.''

Reese denied that he said the employees would never get a contract, or that the matter would be tied up in litigation for years. What he did say, Reese contended, was that both sides would start from scratch. Asked on cross-examination where he heard the term ''bargaining from scratch,'' Reese replied that it was a term he created himself, and denied that he heard it from management. However, Reese also stated that he had heard the term before, and agreed that he had previously been involved in a union campaign when employed by the J. P. Stevens Company. Asked to define bargaining from scratch, Reese replied: ''You just sit down and start from scratch and negotiate a contract.'' Roseman corroborated Reese.

b. *Factual analysis*

Reese's testimony that he created the term ''bargaining from scratch'' is patently false, and his testimony in the next breath that he had previously heard the term is inconsistent with his claim of authorship. His definition of ''bargaining from scratch'' is puerile. Jordan's testimony is consistent with the statements made to employees by other supervisors. She was testifying against her interest, was a believable witness, and I credit her testimony about statements made by Reese.

6. *Robert Freeland*

a. *The evidence*

As previously set forth, former plant manager, Freeland, held many meetings with employees. Euretha Lee, a current employee, testified that in one meeting in late July or early August, Freeland said that the employees might get the Union in, but that they would never get a contract. Freeland held up a blank sheet of paper and said that the Company would go in ''time after time'' with a blank sheet, and come out with it. On cross-examination, Lee denied that Freeland said that bargaining was a two-way street, or that the employees could end up with more or less—''he just said that we would never get one [a contract].''

Sherry Anthony, a current employee, testified that, at a meeting in mid-August during which Freeland made other statements, he declared that the Company could go to the table year after year with a blank piece of paper and come out with the same blank piece of paper—they were not going to agree to a contract because they were not taking checkoffs.

Paula Brice, a current employee, testified that she attended two meetings where Freeland spoke, and at which Sherry Anthony was present.[121] In the second meeting, Freeland said that the Company could go into bargaining year after year and still come up with nothing.

On direct examination, Freeland denied that he made the statements attributed to him by the General Counsel's witnesses.[122] On cross-examination, Freeland testified that he told employees that checkoff would be one of the stumbling blocks during bargaining, that there were examples where a union never obtained a contract, and that the company and the union could go ''year after year'' without reaching an agreement.

b. *Factual analysis*

Respondent argues that Freeland should be credited because, as a former employee, he had no motivation to fabricate his testimony.[123] On the contrary, Respondent still had ''potential influence'' over Freeland's possible future employment by means of references. *Airport Distributors*, 280 NLRB 1144, 1147 (1986). The Company attacks the testimony of the General Counsel's witnesses as inconsistent. I perceive no material contradictions. Although Freeland did not admit precisely the statements he allegedly made, his admissions were close to and consistent with the averments of the General Counsel's witnesses. All three were testifying against their own interests, and I credit their testimony as to the statements made by Freeland.

c. *Legal conclusion*

In summary, Respondent told employees that the Company would not have to bargain in good faith if the Union won; that employees would have something to lose if the union came in; that a union victory would be followed by violence and the fire-bombing of houses; that negotiations were just talk, and that the Company would not negotiate with the Union; that the Employer would go to the negotiating table with a blank piece of paper year after year; that it would tie up the Union in litigation for years; and that the employees would never get a contract.

These statements were egregious in nature, and told employees that selection of the Union would be futile. Accordingly, Respondent thereby violated Section 8(a)(1) of the Act. *Cannon Industries*, 291 NLRB 632, 637 (1988).

Z. The Allegation that Respondent Promulgated a No-Solicitation Rule Which Prohibited Its Employees from Engaging in Conversation Relating to the Union on the Work Floor or During Worktime While Permitting Discussion of Other Topics

1. Frank Rhymer

No evidence was submitted to support this allegation. Accordingly, I shall recommend that it be dismissed.

[121] I correct the name ''Sara Anthony'' as it appears in L. 9 on p. 2099 to read ''Sherry Anthony.''

[122] Freeland was corroborated in his denials by Company Executives Tim Jones and Ron Lisenby.

[123] R. Br. 194.

2. Don Cockrell

a. *The evidence*

Sharon Davis was a union activist who engaged in a large number of activities on its behalf. She testified that, on about July 1, she was sitting in a smoking area during a break, discussing the Union with other employees. After a procompany employee asked Cockrell a question, he stated that the employees should not be talking about the Union, and that they should do so only in the canteen. Davis said that they were on break, and Cockrell replied at they were still in a work area.

Davis then spoke to employee Nancy Houston, and repeated what Cockrell had said. The supervisor walked by, and Houston asked him about union discussions in the smoker. Cockrell replied, according to Davis, that they could only discuss the Union in the canteen.

Cockrell denied making these statements to Davis or any other employee. He admitted sitting with employees in the smoker during designated break periods, and admitted talking about the Union with Nancy Houston. Asked about the nature of those conversations, Cockrell's answer was unclear.

b. *Factual analysis*

Davis' testimony was specific, while Cockrell's, aside from his general denial, was vague. Davis was a more trustworthy witness, and was testifying against her own interest. I credit her testimony.

3. Raymond Ross/Reece Hatley

a. *The evidence*

Wade Story, a fixer in the towel cutting department, testified that, prior to the union campaign, he was allowed to talk to other employees during working time. Numerous other witnesses for the General Counsel testified that they were not prohibited from talking to other employees during working time, and that many extracurricular activities were conducted on the working floor, sales of raffles, hot dogs, race car tickets, and solicitation for various funds—some with supervisory participation.[124]

Story testified that Ross and Hatley told him, about 3 weeks before the election, that he could talk about the Union only in the smoker or the canteen, during breaktime.

Ross and Hatley denied restricting Story in the manner he described. However, on cross-examination, Hatley admitted that he believed that Story was soliciting for union support among the employees. Hatley further admitted his belief that it was against company rules to engage in such solicitation on the plant floor.

Ross, who was Hatley's immediate supervisor, testified that he told Hatley several times during the union campaign to make Story ''stay on the job.'' However, Hatley denied that Ross told him to keep Story busy.

b. *Factual conclusion*

Hatley's stated belief that Story was soliciting for the Union and that this was against the Company's rules is consistent with Story's testimony. It is unlikely that Hatley would have failed to enforce what he perceived to be the Company's rules. Hatley's and Ross' testimonies are contradictory on the issue of whether Ross instructed Hatley to keep Story ''on the job.'' I credit Story, who testified against his own interest, and whose averments are more consistent than those of Respondent.

4. Judy Voyles

As indicated above, union activist Charlotte Hayes had a conversation with Company Executive Robert Freeland after one of the latter's speeches.[125] Hayes testified that, a few days later, Voyles told her that she was not allowed to talk to anybody about the Union except on designated breaks and in designated areas. At Hayes' request, Voyles designated the canteens and the smokers as the area where union discussion could occur. Hayes argued that the employees had customarily eaten lunch at their work tables. Voyles returned a short time later and said that the employees could ''freely talk'' where they ate ''during the designated lunch time.''

A few days later, Voyles told Hayes that she could not talk about the Union on ''any other shift.'' Hayes replied that Voyles must have meant the employee who followed Hayes on the following shift. Hayes customarily spoke with this employee about various subjects in the 10 minutes between shifts. Hayes protested and, once again, Voyles came back later with a statement that it would be permissible for Voyles to talk in the last few minutes ''before the light flashed.''

Hayes' testimony is unrebutted and credited.

5. Jeff Luck

Dorothy Foster testified that she had several conversations with Luck about the Union, and the supervisor agreed. In one of them, in early August, union literature was discussed.[126] Foster averred that, in addition to the discussion of union literature, Luck stated that the employees were ''not to go around talking about the Union.''

Luck testified about alleged statements concerning union literature,[127] but did not deny the latter statement attributed to him by Foster. I credit Foster's unrebutted testimony.

6. Gary Hinson

No evidence was presented to support this allegation. Accordingly, I shall recommend that it be dismissed.

7. Mable Osborne/Jeff Luck

The facts

Dorothy Foster testified that, immediately after the election, Mable Osborne called her into the office and told her that the latter had received complaints that Foster was talking to employees about the campaign. Jeff Luck was present. Osborne told Foster that, since the Company had won the campaign, Osborne would inform employees about it. If Foster told them anything about the campaign, it would be ''grounds for termination.''

[124] Testimony of Alton Linton, Bobby Lawrence, Imelda Walker, Charlotte Hayes, and Dorothy Foster, among others.

[125] Supra, sec. II,J.

[126] Infra.

[127] Infra.

For Respondent, Luck testified that the Company had received reports that Foster told employees that it was not over yet, and that there would be another election. Osborne told Foster that it was the Company's function ''to explain the situation'' to the employees. The supervisors told Foster not to be ''upsetting'' people.

Luck acknowledged that there was no rule prohibiting talking while on the job.

I credit Foster's partially corroborated testimony about this conversation, including her unrebutted averment that Osborne said it would be grounds for termination for Foster to say anything to employees about the campaign.

8. Bobby Eagle

Ronald Teeter testified that, while standing at an elevator waiting to carry material upstairs, he was talking about the Union with a coworker. Eagle came by and told them that they should not be talking about the Union on the job. Teeter stated that the employees customarily discussed many subjects while working, without protest from Eagle.

Eagle stated that he had forms authorizing withdrawal of a union authorization card. He claimed he gave them to employees who wanted them, but everyone accepted the form, including Teeter. Eagle acknowledged telling Teeter that he could not distribute union literature on the work floor, but denied telling him that he could not talk about the Union.

Teeter's testimony was consistent with the evidence presented about other supervisors from the General Counsel's witnesses, and he was a credible employee. I accept his testimony.

AA. *The Allegation that Other Activities Were Permitted on the Work Floor During Working Time*

The evidence cited above about the many activities which the Company permitted on the working floor during working time is not denied. I have already found that Connie Dellinger, an employee who wore a Vote No T-shirt, was not prohibited from talking to other employees during working time.[128]

Legal conclusion

It is clear that Respondent did not have a general rule against talking on the job, and that it permitted employees to engage in a wide variety of activities on the working floor during working time, unrelated to work. Nonetheless, it promulgated a rule which prohibited employees from talking about the Union on the job. The disparate aspect of this rule made it unlawful under established law, and I so find.

[128] Supra, sec. II,V,2.

BB. *The Allegation that Respondent Promulgated a Solicitation Rule Which Prohibited Employees from Engaging in Union Activity in Nonwork Areas During Nonwork Time*

Gerald Holt

1. The evidence

As set forth above,[129] Perry Harkey asserted that employee Martin Kelly told him that Tony Bumgarner had attempted to get Kelly to sign a union card.

Bumgarner testified that he asked Kelly to sign a union card while they were together in the canteen. Kelly replied that he had already signed a card or was going to sign one.[130]

Kelly testified that Bumgarner asked him to sign a card while both of them were on break in the canteen, and that Kelly replied that he would think about it. The conversation took a few seconds. However, Kelly contended that he had a prior conversation with Bumgarner at his work station about 2 hours before the conversation in the canteen. Kelly asserted that, during this prior conversation, Bumgarner asked him whether he would sign a union card, and Kelly replied that he would think about it.

Following this first conversation with Bumgarner, according to Kelly, he reported to Supervisor Harkey that Bumgarner was ''aggravating him on the job'' by trying to get him to sign a union card. Kelly also contended that he did in fact sign a union card.

Harkey stated that Kelly came into Harkey's office and complained that Bumgarner was out there ''on his job'' trying to get Kelly to sign a union card. Without questioning Bumgarner, Harkey informed Assistant Department Manager Holt that Bumgarner was ''out there'' trying to get Kelly to sign a union card.

Bumgarner testified that, about 30 minutes after his conversation with Kelly in the canteen, Holt approached him and said that if he had any union business, to do it on his own time. Bumgarner replied that a breaktime was his time, and Holt walked away.

Holt, on the other hand, declared that he told Bumgarner that he had every right to solicit people to sign union cards, but that it had to be done on Bumgarner's breaktime in a break area. Bumgarner replied ''Okay.'' There is no evidence that Holt questioned Kelly about the matter.

2. Factual and legal conclusions

Kelly's testimony is implausible for two reasons. He asserts that he and Bumgarner had two conversations, separated

[129] Supra, sec. II,S.

[130] In his pretrial affidavit, Bumgarner asserted that Kelly gave the response indicated above, and that Bumgarner replied that he would ''see where it will go from there.'' The affidavit also stated that Kelly did sign a union card. I do not consider this to be a contradiction of Bumgarner's testimony that Kelly did not sign at Bumgarner's request in the canteen.

by only a short time, which were almost identical in nature. Why would Bumgarner have repeated the same request in the canteen which, according to Kelly, he had already made at the work station? Further, if Bumgarner's request ''aggravated'' him, according to Kelly, why did he sign a union card, as he contended that he did?

Bumgarner was a current employee testifying against his interest, while Kelly's arguments were inconsistent. I credit Bumgarner's testimony and conclude that he had one conversation about card signing with Kelly, and that it took place in the canteen during a break period.

Harkey did not question Bumgarner, and Holt did not question Kelly or Bumgarner. It is unlikely that Bumgarner, after talking to Kelly in the canteen during a break, would have meekly replied, ''Okay,'' when Holt allegedly admonished him to solicit on his own time in a break area. Yet this is the account of the conversation according to Holt. I credit Bumgarner's account that Holt told him that, if he had any union business, to do it on his own time. Since Bumgarner in fact had solicited Kelly in the canteen during a break, this amounted to telling Bumgarner that he could not do so.

This was violative of Section 8(a)(1) under established law.

CC. *The Allegation that Respondent Polled Its Employees Regarding Their Support for the Union*

1. The evidence

As indicated, Tony Bumgarner was a union activist who engaged in a large number of activities on behalf of the Union. He testified without contradiction that, 3 days before the election, Supervisor Gene Alston asked him whether he wanted a T-shirt.

2. Factual and legal analysis

There is abundant evidence that supervisors offered procompany T-shirts to employees, and there is no doubt that the shirt which Alston offered was a procompany shirt.

Although Bumgarner was a well-known union adherent, the background circumstances of this case, including the large number of unfair labor practices, and the Company's strong antiunion animus, show that the offer of the T-shirt was to determine whether Bumgarner would recant his prounion sympathies. Accordingly, the offer was coercive and unlawful, for the reasons stated in subsection A, where the complaint calls similar conduct ''interrogation.''

DD. *The Allegation that Respondent Prohibited Its Employees from Having Prounion Literature in Their Possession and/or Workplace While Permitting Procompany Literature*

1. David Cockrell

a. *The evidence*

Sharon Davis testified that there is a bench near her machine, on which she customarily places her coat and lunch. Other warp tenders sit on the bench and read books and magazines when their jobs are caught up. Newspapers are left on the bench.

Davis brought some union leaflets into the plant one day, and placed them on the bench. Cockrell told her to remove it. Davis replied that she had customarily placed her personal belongings on the bench, and Cockrell replied that it was a company bench. Davis then placed the material in a desk located a few feet from her machine. At the end of her shift, the material was gone. Davis testified that she asked Cockrell and another employee if they knew where it was, and that they denied knowledge.

Cockrell admitted seeing employee purses and newspapers on the bench, but not union literature. He admitted seeing union handouts in the drawer of the ''waprer [sic] desk,'' and agreed that he asked Davis whether the material was hers. She replied affirmatively. Production material is kept in the desk, according to Cockrell. He told Davis to ''put it up,'' but denied knowledge of where she put the leaflets. Cockrell also denied that Davis asked where the material was.

b. *Factual analysis*

There is no reason to doubt Davis' testimony that the union literature disappeared. Nor is there evidence of a place to put it other than the bench or the desk drawer. Cockrell's testimony simply transfers the original location from the bench to the desk drawer, and then denies knowledge of where it went from there. Davis' account is more probable, and she was a current employee. I credit her testimony that Cockrell ordered her to remove it from the bench, and I note Cockrell's admission that he ordered her to remove it from the desk drawer.

2. Jeff Luck

a. *The evidence*

Sherry Anthony testified that she brought some union literature into the plant and placed it on the ''rework table.'' Jeff Luck picked it up and said that, if he knew who was passing it out, they could lose their jobs. Employee Tracy Miller, who arrived during the conversation, asked whether she could lose her job if she brought in union literature and gave it to Sherry Anthony to pass out during her breaktime. Luck replied, ''Yes, you could.''

Anthony told Luck that she thought that what the employees did on breaktime was their business. Luck replied that the employees were in there for 8 hours, and what they did on breaktime was the Company's business.

Anthony also testified that during working time she saw Luck give employee Kevin Fite[131] antiunion literature to pass out, and that Fite attempted to give some of this literature to her. Dorothy Foster testified that supervisors gave Fite a copy of the ''blue book,'' a contract with the Union which the Company had at one of its other plants. Foster testified that Fite read the contract on and off for an 8-hour shift, and did not do a full night's work.

Luck agreed that he saw union literature on the rework table. He contended that Anthony said that the literature was Dorothy Foster's. Foster was not present during this conversation. Luck averred that he told Anthony that literature could be distributed only in the smokers or the canteen. He had a separate conversation with Foster in which he gave the same instruction. He denied telling Foster that she could be

[131] The name ''Calvan Flight'' is corrected to ''Kevin Fite'' where it appears on pp. 447 and 448 of the transcript.

terminated for distributing union literature. Luck was asked on direct examination whether he gave company literature to Fite to pass out to employees. He replied that the only things ''Kevin gave out for me'' were documents concerning insurance and the credit union. He denied that Fite gave out documents pertaining to the election, but admitted that he himself did so.

Luck testified that Fite favored the Company. He also affirmed that he himself carried a copy of ''the blue book'' with him. Luck admitted that he gave Fite a copy of the contract to read, but contended that this took place for only 10 minutes during a conversation with Fite; Luck denied that Fite spent an entire shift reading the contract.

b. *Factual analysis*

The significant issue is whether Luck simultaneously permitted employees to distribute antiunion literature in working areas, while prohibiting distribution of union material. Although Luck denied giving union literature to Fite for distribution to employees, he admitted giving other material to him for such distribution. This contention stands against Anthony's testimony that she saw Luck give union literature to Fite—denied by Luck—and Anthony's unrebutted testimony that Fite in fact offered her such material. It is unlikely that Fite, although he was antiunion, manufactured such material himself. I credit Anthony's unrebutted testimony that Fite offered her such material, and her averment the she saw Luck give it to Fite. Luck's contention that Fite read the contract for only 10 minutes during a conversation between the two of them is less credible than Foster's account that Fite read it off and on for an entire shift.

I also credit Anthony's testimony that Luck said employees could be fired for passing out union literature. When Anthony protested that what employees did during break periods was their own business, Luck responded that what employees did for the entire 8-hour shift was the Company's business. Although Luck denied telling Dorothy Foster that she could be fired for giving union material to Anthony for distribution, he did not deny telling Tracy Miller that she could be fired for giving Anthony union material to pass out during break periods—as averred without contradiction by Anthony.

I credit the testimony of Anthony and Foster.

3. Percy Smith

I have already found that, a short time before the election, Smith told Timothy Honeycutt in Smith's office that he did not want Honeycutt passing out union literature in the smoker, to which Honeycutt replied that the smoker was a break area.[132]

Legal conclusion

The credited evidence thus shows that the Company prohibited distribution of union literature in the workplace, and, in Percy Smith's case, in break areas. Supervisor Jeff Luck told employees that what happened during break periods was the Company's business, and threatened an employee with discharge if she brought in union literature for distribution during break periods. Luck during working time gave an employee antiunion literature for distribution to employees, and the latter attempted to distribute it on at least one occasion.[133] In addition, as described above, the Company permitted other forms of solicitation on the work floor during working time—sales of raffle tickets, food, solicitation for various funds, etc., some with supervisory participation.

The Company's published rule states that ''distribution of literature, pamphlets, or printed material of any kind by employees in work areas of the mill at any time'' is grounds for discharge.[134]

The evidence establishes that Respondent disparately applied this rule only to union literature, and thus violated Section 8(a)(1), *Springfield Manor*, 295 NLRB 17, 30 (1989). The disparate nature of Respondent's rule is emphasized by the fact that Percy Smith ordered Honeycutt not to distribute union literature in a break area.[135]

EE. *The Allegation that Respondent Granted Its Procompany Employees the Opportunity to Return Late After Their Designated Lunch Period While Preventing Union Supporters from Doing the Same*

1. The evidence

Eric Strickland, a current employee, testified that Supervisor James Allen allowed procompany employees to return late from lunch during the campaign. Two employees identified by Strickland were Mary Baker and Charles Rhodes. Allen saw this, according to Strickland. After the election, Allen informed the employees that it was time to enforce rules more strictly, since ''the Union issue [had] been settled.''

Earl White, an alleged discriminatee, corroborated Strickland and identified ''Mary, Loretta, John, and Charles'' as the procompany employees who were favored with longer lunch periods. They walked directly past Allen when returning, according to White. After the election, Allen told all employees to stop playing and get back to work.

Allen contended that he spoke to all the employees during the campaign about coming back too late from lunch, including Eric Strickland and Earl White.

Respondent's witness Patsy Jamerson, a training instructor, testified on direct examination that she and James Allen advised employees that they had to come back from lunch on time. However, on cross-examination, Jamerson admitted that Charles Rhodes and Mary Baker, who opposed the Union according to Jamerson, came back later from breaks. Both were employed by Respondent at the time of the hearing, but did not testify.

Respondent's witness Ivey Mosely, on the other hand, asserted that Earl White was the only employee who came back late from a break. Nonetheless, Allen told all employees going on break to be back on time.

Roslyn Hemphill asserted that Allen told employees he would write them up if they came back late.

[132] Supra, sec. II,A.

[133] Although I do not rely upon it, there is abundant evidence that supervisors distributed antiunion literature in work areas during working time.

[134] G.C. Exh. 23, rule 10.

[135] For a similar allegation and evidence, see sec. II,FF, infra.

2. Factual and legal analysis

Eric Strickland's testimony identifying procompany employees Mary Baker and Charles Rhodes as some of the employees who came back late from breaks was corroborated by Respondent's witness, Patsy Jamerson and by Earl White. The latter named ''Mary'' and ''Charles'' as those who came back late. Nether Mary Baker nor Charles Rhodes—employed at the time of the hearing—was called as a witness by Respondent.

The Company's position is that Allen told all employees that they were not to come back late. Although Ivey Mosely maintained that Allen spoke to all employees, White was the only one who was late. This contradicts Allen's and Hemphill's testimony. There is no evidence that Allen wrote up anybody for being late.

Strickland was a believable witness testifying against his own self-interest. He was corroborated by other testimony, including statements from one of Respondent's witnesses. The Company's evidence, on the other hand, was confused and inconsistent. I credit Strickland's averments that Allen allowed procompany employees to come back late from breaks during the campaign, but, after the election, imposed a more even-handed rule.

This disparate treatment was a de facto rule which favored the procompany employees, and violated Section 8(a)(1) of the Act.

FF. *The Allegation that Respondent Permitted Procompany Employees to Distribute Campaign Literature on Company Time in Violations of Its No-Solicitation and Distribution Rule While Not Allowing Prounion Employees to Do the Same*

1. Gary Hinson

a. *The evidence*

Vickie Fink, a current employee, described Sheila Allmon as an antiunion employee who worked in the same department with Fink. Fink testified: ''I noticed on several occasions she [Allmon] would go into department manager Bill Dellinger's office. She would come back out with a manila envelope. Several minutes later she would be handing out anti-Union literature.'' Fink averred that Allmon gave out the literature to everybody in the plant, including Fink, during working time. Supervisors, including Gary Hinson, were on the floor walking around.

Sheila Allmon admitted that she distributed antiunion material in the plant. However, she contended that she did so only during break periods and before work. Allmon denied getting any literature from Bill Dellinger. She agreed that she did obtain documents in a sealed envelope from Dellinger, but contended that it was scholarship material for her daughter. ''Who's Dellinger?'' Allmon was asked. ''Oh,'' she replied, ''[H]e's my superintendent of the spinning at Plant 15.''

Allmon contended that she obtained the antiunion literature from a nonsupervisory employee named ''Thelma,'' in another plant. Allmon stated that she carried the material to the mill in a brown manila envelope which she carried back and forth every day. She placed the literature in a break area for employees to pick up, and put the manila envelope in her locker.

Hinson denied seeing Allmon distribute antiunion literature, and denied seeing her go into Dellinger's office. The latter did not testify, nor did ''Thelma.''

b. *Factual analysis*

On the basis of Allmon's testimony, I find that Bill Dellinger was a supervisor and that he was employed by Respondent at the time of the hearing. Respondent did not call him to rebut Fink's testimony that she saw Allmon enter Dellinger's office on several occasions, and come back with a manila envelope. Fink further averred that Allmon thereafter distributed antiunion material to all the employees. Dellinger's testimony could have thrown light on the inference tacitly suggested by the General Counsel. I infer that, if called, Dellinger's testimony would have been adverse to Respondent's interest. *International Automated Machines*, 285 NLRB 1122 (1987).

''Thelma'' was either a real person employed by Respondent, or a fiction. If the latter, Allmon was not telling the truth. If the former, Respondent's failure to call ''Thelma'' warrants the same inference as in the case of Dellinger.

Fink was a truthful witness who testified against her own interest. I credit her testimony.

Given the fact that Hinson and other supervisors were constantly walking on the floor, and the constant surveillance of employee activity established by the record, it would have been improbable for Allmon to have given such material to everybody in the plant without supervisory knowledge of the distribution, and I conclude that the supervisors had such knowledge.

2. Eddie Gurley

The facts

Mary Gray testified that she saw employees Vivian Perkins and Eva Banks handing out procompany literature during working time. Banks did it on a couple of occasions, and Perkins did it once. There was a posted no-solicitation sign, according to Gray.

Gurley admitted that he asked Eva Banks to hand out procompany literature. Although Banks occasionally acted as a fill-in supervisor, she was not acting in this capacity at the time. Gurley maintained that his own supervisor, Gene Miles, told him not to use employees for distributing literature, and that he did not do so thereafter. Gurley denied telling Perkins to distribute literature. Perkins corroborated Gurley, and denied handing out any antiunion literature.

Gurley's admission establishes the validity of the allegation as to Eva Banks.[136]

3. Tammy Fox

a. *The evidence*

Shirley Hamilton is an alleged discriminatee, whose supervisor was Tammy Fox. Hamilton testified that employee Brenda DeMarco distributed antiunion material to her while she was working. Kemberley Watts, a current employee, also testified that Brenda DeMarco gave her antiunion material

[136] In light of my finding above, I consider it unnecessary to resolve the conflicts in the testimony of Mary Gray and Vivian Perkins.

during working time. Watts further testified that employees Sharon Noblett and Kay Osborne, who worked on the next shift, handed out antiunion material at the gate, and did not arrive at their work stations by the time their shift had started. Noblett would still be at the gate after the prior shift had ended, as Watts was leaving. Osborne was with Noblett.

Tammy Fox stated that DeMarco handed out ''plant mail'' and newspapers for her. Fox denied that she asked DeMarco to distribute any antiunion material, but admitted that DeMarco ''could have'' done so.

DeMarco testified that Fox had antiunion material on her desk, and that Fox gave DeMarco some at the latter's work station. DeMarco denied distributing antiunion material to employees, but affirmed that she distributed other written material for Fox.

Kay Osborne admitted handing out procompany literature at the gate. However, she contended that she did this on her own time, and never arrived at her work station later than the starting time of 7 a.m.. Osborne arrived at the plant at about 6:30 a.m., and distributed procompany literature until about 6:55 a.m.. This meant that she could not distribute to employees coming off the preceding shift.

It took Osborne 30 seconds to get from the gate to the door of the building, and her work station was ''a couple hundred feet'' further. This took her about 3 minutes to traverse. Osborne contended that she saw Watts and another employee at their work stations while she was going to hers, and denied ever passing them after the shift had changed.

Noblett denied distributing any antiunion literature.

b. *Factual analysis*

Fox's testimony that Brenda DeMarco ''could have'' distributed antiunion material to employees constitutes partial corroboration of the testimony of Hamilton and Watts that DeMarco did so. The latter admitted receiving antiunion material from Fox. Watts was a current employee testifying against her own interest, and I credit hers and Hamilton's accounts of DeMarco's distribution of antiunion literature to employees during working time.

Osborne's asserted time schedule at the gate was so tight that it is difficult to see how she could maintain it. Watts was a more believable witness than Osborne or Noblett, and I credit her testimony that she saw Noblett, together with Osborne, at the gate distributing procompany literature after their shift had started.

4. Diane Neely

a. *The evidence*

Brenda Harrell, a current employee, testified that employees Delma Smith and Martha Barrineau received antiunion literature in August from Supervisor Neely, in her office. Harrell on one occasion saw Neely hand literature to Smith, and heard her instruct the latter to distribute it to employees. Thereafter, Harrell received a ''paper against the Union'' from Smith. Harrell observed Smith and Barrineau distributing such material on two occasions.

Cynthia Hanes, a current employee, testified that, late in the campaign, Smith and Barrineau handed out antiunion literature to employees during working time. Hanes saw Neely handing the leaflets to Smith. Hanes also affirmed that employee Connie Dellinger handed out antiunion buttons to employees during working time, and that Neely ''had to see her.''

Neely denied that Smith or Barrineau distributed union literature, but agreed that they distributed other documents such as newsletters and credit union material. Neely admitted that Barrineau on one occasion helped her prepare antiunion material, but contended that she herself was the only one who distributed the material.

Barrineau, on the other hand, admitted distributing antiunion literature on one occasion, but stated that she was acting as a fill-in supervisor for Neely at the time. Neely confirmed that Barrineau was a fill-in supervisor on occasion, but did not know whether she passed out antiunion material when acting in that capacity.

Connie Dellinger admitted distributing antiunion buttons, but maintained that she did so only in the canteen, and never on the working floor. Neely denied seeing her engage in the latter activity.

Delma Smith did not testify.

b. *Factual analysis*

Two current employees, Harrell and Hanes, testified that they actually saw supervisor Neely giving antiunion material to employees Smith and Barrineau. Harrell heard Neely's instructions to distribute the material to the employees—an order which was followed. Neely and Barrineau contradict each other as to whether Barrineau ever did distribute such literature. I do not credit Barrineau's testimony that she did so only when acting as a fill-in supervisor—Neely knew nothing about it.

I do not credit Neely's denial that she saw Dellinger distributing antiunion buttons on the working floor, nor do I credit Dellinger's contention that she did so only in the canteen. Dellinger was opposed to the Union, while Harrell and Hanes were both testifying against their interest. I credit their testimony.

5. Don Ross

No evidence was presented to establish that Ross allowed employees to distribute antiunion material, and the General Counsel moves to delete this allegation.[137] The motion is granted.

6. Kenneth Munday/Betty Love

a. *The evidence*

As indicated, Patricia Boone wrote a letter comparing benefits in Respondent's unionized and nonunionized plants, and Respondent took exception to some statements in the letter.[138] Boone distributed copies of this letter to employees during breaks in break areas. Boone and Supervisor Betty Love agree that the latter told Boone that the latter could not pass out union literature in working areas.

Boone testified that she saw employees Pam Garrett and Barbara Hunter distribute antiunion materials to employees during working time.

On direct examination, Barbara Hunter agreed that she passed out work-related literature to employees, but denied passing out antiunion material. On cross-examination, Hunter

[137] G.C. Br. 21 fn. 9.
[138] Supra, sec. II,X,1.

admitted that she saw ''Company material about the Union'' in the work areas. She first contended that it was distributed by supervisors, but then agreed that she received it from supervisors and posted it on bulletin boards during her working time.

Pam Garrett said that she distributed mail, but denied distributing antiunion material. In fact, Garrett denied seeing any antiunion material in the workplace.

b. *Factual analysis*

Boone is alleged to have received a discriminatory warning.[139] She was laid off in October, due to lack of work, and her layoff is not alleged to be unlawful. She was therefore subject to recall, and her testimony against Respondent was against her own interest. Hunter admitted posting antiunion material on the bulletin board in working areas, while Garret's denial that she saw any antiunion material in working areas is highly improbable, in light of Respondent's admissions that supervisors distributed such materials. Boone was a truthful witness, and I credit her testimony.

c. *Legal conclusion*

For the reasons given above, I conclude that Respondent disparately enforced its no-distribution rule in violation of Section 8(a)(1) of the Act.

GG. *The Alleged Rule Prohibiting Only Union Employees from Distributing Union Literature During Nonwork Time in Nonwork Areas*

I have found above that Jeff Luck told employees that they could be fired for distributing Union literature. When an employee protested that what employees did during their break periods was their own business, Luck replied that what the employees did during their entire 8 hour shift was the Company's business.[140]

The effect of this statement was to prohibit distribution of union literature during break periods. Inasmuch as Respondent allowed other employees to distribute antiunion material at all times, Luck's statement amounted to a de facto no-distribution rule which applied only to union literature. As such, it violated Section 8(a)(1) of the Act.

HH. *The Allegation that Respondent Solicited and Remedied or Promised to Remedy Employee Grievances in Order to Discourage Their Support of the Union*

1. M. D. Ford

a. *The evidence*

As indicated above, Plant Manager M. D. Ford held numerous meetings with employees during the union campaign. Three of the General Counsel's witness[141] testified that, at meetings which they attended, Ford asked employees individually to express their concerns, questions, and problems. One of the employees asked whether Respondent was paying 12 hours' pay as holiday pay, or 8 hours. Ford replied that holiday pay was for 12 hours, and the employee replied that this was not posted. A short time later, a notice was posted stating the 12-hour holiday pay policy. Other employees raised questions about an insurance increase, job cutouts, and 12-hour shifts. At the end of each meeting, Ford said that he would check into the matter. Personnel Manager Drumm took notes.

Ford agreed on direct examination that he held 20 to 24 meetings with employees about their concerns, questions, and problems. Ford further affirmed that he said that he would check into these matters and get back with the employees.

Ford contended that he had been holding such meetings since 1972. He would hold one meeting per month on each shift. General meetings of all employees would be held two to five times per year, and employees would be invited to meetings ''on their anniversary date with the Company.''

b. *Factual analysis*

Ford's own testimony establishes that his meetings with employees after the advent of the union campaign increased markedly over the number of asserted meetings prior to that time. There is no question, as Ford admitted, that he asked employees about their concerns and problems. On one issue, holiday pay, an employee concern was resolved with the posting of a notice.

2. Harold Roseman

a. *The evidence*

Nine of the General Counsel's witnesses[142] testified about various employee meetings conducted by Plant Manager Harold Roseman and Personnel Manager Dan Shuping. Shuping took notes at Roseman's direction. All of the witnesses testified that Roseman asked about employee problems, and one of them[143] stated that Roseman said it was a grievance meeting. Concerns voiced by the employees included the following subjects: (1) unequal pay for the same work; (2) requests for ''sick days''; (3) discontinuance of free sodas, coffee, and appreciation dinners; (4) raises; (5) poor lighting; (6) disparity in work schedules among shifts; (7) absence of a Christmas bonus; (8) production quotas; (9) poor material; and (10) poor treatment by a supervisor. The General Counsel's witnesses also testified that Respondent soon thereafter provided remedies as to items (3), (5), and (6) above. On some of the remaining issues, Roseman said he could not do anything about it, and as to others he said he would get back to the employees.

Roseman testified that he had been plant manager in plant 6 in Kannapolis since about November 1990. He had previously been employed at another plant. He asserted that he conducted employee meetings immediately after his transfer to plant 6, and held them ''at least monthly—sometimes bimonthly.'' At these meetings, he would ask employees about their problems and promise to investigate. He continued the same policy after the advent of the union campaign.

Sharon Noblett was called as a witness by Respondent. On direct examination, she testified that Harold Roseman held ''gripe sessions'' before and after the advent of the union campaign. On cross-examination Noblett did not know how

[139] Infra.

[140] Supra, sec. II,DD,2.

[141] Sandra Greene, Sherry Smothers, and Terry Smothers.

[142] Tina Moore, Sylvia Crawford, Mary Edgison, Sharon Shue, Joeann Diggs, Eric Strickland, Shirley Hamilton, Kemberly Watts, and Peggy Jordan.

[143] Joeann Diggs.

many ''gripe sessions'' were held in the 3 years she had been on her current job, but estimated that it was less than 10.

b. *Factual analysis*

Roseman's assertion that he held employee meetings before the advent of the campaign at least monthly, sometimes bimonthly, is contradicted by Noblett's admission that less than 10 such sessions were held in the 3 years she had been on her current job. This would account to about 3 per year as compared to Roseman's claim of 12 to 24 annually.

Because of the possibility of duplication in the testimonies of the General Counsel's witness, it cannot be determined precisely how many different meetings they described. A fair reading of the evidence warrants a finding that they discussed at least four meetings from mid-June to mid-July. This is far more than the 3 per year estimated by Noblett. Indeed, it is more than the number of precampaign meetings claimed by Roseman.

I conclude, as admitted by Roseman, that he conducted employee meetings after the advent of the union campaign, at which he asked them to state their problems. I also conclude that the number of such meetings was greater than any that may have been conducted before the advent of the union campaign. Respondent resolved some of the complaints voiced during the campaign meetings, and Roseman said that he would get back to the employees on some of the others.

3. Robert Freeland

The facts

Robert Freeland was transferred from another plant and began work on June 10 as manager of the towel fabrication plant in Kannapolis. The union campaign started 2 days later, and Freeland held meetings with employees in which he asked them about their problems.[144] One of the complaints was that the employees were not notified until Friday evening that they had to work overtime on the weekend. Another complaint was that a supervisor engaged in cursing. Thereafter, weekend overtime was announced on Wednesday, and the supervisory cursing diminished.

4. Jim Perkins

The General Counsel relies on a statement made by Perkins to Patricia Boone on August 19. During that conversation, as I have found, Boone said that the employees had been ''done dirty'' by the Company, and needed to stand up for what they believed. Perkins replied that the Company had a procedure for solving problems, and that if Boone had a problem she should come to the Company, which would attempt to solve it.[145]

5. Aaron Owens

The facts

Owens came to the Company to replace Jim Perkins. After the conversation which Perkins had with Patricia Boone, described above, Owens approached Boone and another conversation ensued. According to Boone, Owens asked why the employees thought they needed a union. Boone replied, as she had to Perkins, that the Company had ''done the employees dirty.'' Owens replied that if Boone had any problems, she should talk to the Company, and they would try to solve it.

Although Owens gave a different version of this conversation on direct examination, he corroborated Boone's testimony on cross-examination.

6. David Rutland and Ben Davis[146]

a. *The evidence*

George Likard Jr., a current employee, testified that he worked in the weave room in one of Respondent's Kannopolis plants, and that his loom was malfunctioning. He reported this to his supervisor, who responded, ''Run it.'' Likard attended an employee meeting in June which was conducted by Plant Manager David Rutland and Personnel Manager Ben Davis. Rutland asked if the employees had any problems, and said that the Company would try to solve them. Likard reported his malfunctioning machine, the supervisor's failure to take corrective action, and asked whether he would be written up for producing defective cloth. Rutland replied affirmatively. The machine was repaired, 2 days later.

Rutland contended that he said he could not make any promises, but would check into matters. He did not recall Likard's complaint. However, Rutland contended that if any such issue had been raised, his response would have been to get the machine fixed. He had been conducting weekly employee meetings of this nature since his assumption of the plant manager's job in August 1989. On cross-examination, Rutland agreed that after the union campaign began he held about 20 meetings weekly of about 35 employees each. He repeated that the frequency of his precampaign meetings was once weekly. On further cross-examination, Rutland admitted that two of his ''regular weekly meetings'' were canceled during the union campaign, and were resumed in December.

Rutland opined that notes were probably kept of the union campaign meetings, but did not recall seeing any in the file.

On cross-examination, Benjamin Davis corroborated Rutland's admissions that the frequency of employee meetings increased after the advent of the union campaign. Davis asserted that notes were kept of the precampaign meetings, and that none was thrown away. No notes were kept of the campaign meetings.

Respondent introduced notes of employee meetings at which complaints were voiced. There are four such notes and all are dated in 1991—January 9, February 13 and May 22 and 29.[147]

b. *Factual analysis*

I credit Likard's testimony that his loom was malfunctioning, that he reported this as a problem at a June meeting with Rutland, and that the defect was corrected 2 days later. Rutland's contention that he said he could make no promises but

[144] Testimonies of Freeland, Pat Boger, Mark Gray, and Susan Cavin.

[145] Supra, sec. II,X,1.

[146] The names of Rutland and Davis do not appear in par. 14(gg) of the complaint. However, the evidence concerning them was thoroughly litigated and briefed by the General Counsel and Respondent.

[147] R. Exh. 125.

would check into complaints is contradicted by his testimony that he would have responded to Likard by saying that the machine would be repaired—and by the fact that it was repaired.

Although Rutland initially contended that meetings with employees during the campaign were merely a continuation of prior practice, he and Davis conceded that there were many more employee meetings after the campaign began. Despite Davis' admission that notes were kept of the asserted precampaign meetings, Respondent introduced notes of only five covering a 5-month period in early 1991. Respondent's evidence does not establish the frequency of ''regular meetings'' alleged by Respondent's witnesses. There were notes of only five in 5 months. Based on the admissions of Respondent's own witnesses, the meetings during the campaign were markedly greater in number than the alleged precampaign meetings.

c. *Legal conclusion*

The credited evidence thus establishes that Respondent held numerous employee meetings during the organizational campaign in which it asked employees to express their problems or concerns, said that it would check into to them and get back to the employees, and, in fact, resolved some of the complaints after the employee meetings.

Respondent cites a number of cases which, it argues, establish that its conduct was not unlawful.[148] Thus, it cites *Lasco Industries*, 217 NLRB 527 (1975), to support its argument that it was merely continuing a prior practice. In *Lasco*, however, the Board agreed with the administrative law judge that the employer violated the Act by soliciting and remedying grievances. In *Williams Litho Service*, 260 NLRB 773 (1982), cited by Respondent, the Board concluded that the employer's offer of a modified workweek following a strike was a legitimate business decision which followed past practice. ''Apart from the suspicious timing,'' the Board stated, ''there is no evidence of any causal connection between the Union's nascent organizational effort and the employee meeting or any of the subjects discussed at that meeting.'' (Id., 260 NLRB at 774.) In contrast, the magnitude of Respondent's unfair labor practices in this proceeding provides ample evidence of a causal connection. In the *General Electric Co*., 246 NLRB 1103 (1979), cited by Respondent, the administrative law judge found no express or implied promise to remedy benefits, and the Board adopted this conclusion in the absence of exceptions.

The Board's current position has recently been summarized in language which is applicable to the facts in this case:

> The Board has held that the solicitation of grievances at pre-election meetings ''raises an inference that the employer is making . . . a promise [to correct grievances] ''which inference is rebuttable by the employer.'' [Authority cited.] There is no basis in the record here for concluding that the inference that the Respondent implicitly promised to redress grievances had been rebutted. The record, in fact, shows that Respondent actually corrected some grievances identified by employees. [*Blue Grass Industries*, 287 NLRB 274 fn. 4 (1987).]

In this case, Respondent's numerous statements eliciting employee problems and concerns during the organizational campaign warrant an inference of unlawful motivation. As in *Blue Grass Industries*, supra, there is no evidence to rebut that inference. Respondent's argument about past practice is without merit for the reasons given above. Its numerous solicitations and actual remedy of some problems be lie its argument that these were simply business decisions, as in *General Electric Co*., supra. Unlike that case, the case at bar has more than ''suspicious timing'' to warrant an inference of unlawful motive, to wit, the host of other unfair labor practices which the Company committed.

For these reasons, I conclude that Respondent violated the Act as alleged in this section of the complaint.

II. *The Alleged Statement that a Prounion Employee Would No Longer Be Given a Higher Paid Temporary Assignment*

Randy Mann and Jimmy Baker

1. The evidence

Robin Teal, a current employee, was an order auditor, and for 3 years had served as a temporary fill-in supervisor at higher pay when her regular supervisor, Randy Mann, was absent. Teal testified that she had a conversation with Mann in June about Delma Stanford, another temporary supervisor. According to Teal, Mann said Stanford was a union supporter. His own supervisor, Gene Austin, told Mann that he no longer wanted to use Stanford because of his support of the Union. Mann advised Austin that this would be unlawful. However, Mann told Teal, Stanford would no longer be used as a temporary supervisor after the campaign was over.

Mann testified, and confirmed that he knew in June that Stanford supported the Union. He also agreed that he told Teal that management was upset about this fact, and wanted to remove Stanford as temporary supervisor, but could not lawfully do so. After the election, Man stated, Stanford would be removed from this position.

Teal became an active supporter of the Union in late July or early August. She engaged in leafleting and other organizational activities. However, Teal testified, she did not campaign for the Union while acting as a temporary supervisor, although she continued to support it. As Teal put it, she tried ''to have respect for the Company.'' Teal informed Mann in early August that she supported the Union.

On August 19, according to Teal, Plant Manager Jimmy Baker asked for a private conversation, and told her that it was not too late to change her mind about the Union. Teal replied that she would continue to support the Union, and asked whether she and Stanford would be discontinued as temporary supervisors. Baker said that this would take place after the campaign.

On August 22, Mann asked Teal how the election would go. Teal asked whether she and Stanford would be removed as temporary supervisors, and Mann replied that Baker would handle this. Mann was taking a vacation the next day, but told Teal to perform her regular job duties rather than act as a temporary supervisor. On August 26, according to Teal, Baker told her that he was removing her as a temporary supervisor because she supported the Union.

[148] R. Br. 230–248.

Baker agreed that the Company no longer uses Teal as a temporary supervisor, and asserts that it is justified in refusing to do so, principally because Teal is ''opposed to the Company's management philosophies,'' and that the Company ''expects loyalty from its supervisors.

2. Factual and legal analysis

There are no significant factual issues. Respondent argues extensively about the difference between employees and supervisors, states that a ''temporary supervisor'' is not an employee, and cites authority for the proposition that an employer may discipline an employee for engaging in union activity while in a supervisory status. *Gino Morena Enterprises*, 287 NLRB 1327 fn. 3 (1988). Respondent then proceeds to its final argument:

> Significantly, Teal conceded that she supported the Union at all times, even when she was serving as a temporary supervisor. That she may not have worn union insignia on those occasions is not controlling. It is mere fiction to argue that because the supervisor removes prounion shirts and buttons, the Company is not harmed by having its legal agent promote a philosophy not supported by management when he or she is away from work.[149]

The Board has considered a case with almost identical facts. In that case, the alleged discriminatee had served as a temporary supervisor. She later became an active union supporter, and the employer thereafter failed to select her as a temporary supervisor for reasons which the Board found to be pretextual. *Advanced Mining Group*, 260 NLRB 486 (1982). The Board agreed with the administrative law judge that the employer had violated the Act by ''refusing to promote and grant a wage increase (to the employee) because she supported the Union'' (id. at 513).

In this case, Teal had already performed as a temporary supervisor after her union sympathies became known. However, she refrained from campaigning while she was a temporary supervisor out of respect for the Company. The facts here are stronger than in *Advanced Mining Group*, supra, where the employer had no way of knowing whether the employee would exercise similar restraint.

Respondent's attempt to enlarge the holding of *Gino Morena Enterprises*, supra, is without merit. There is no evidence that Teal's ''support'' of the Union while acting as a temporary supervisor consisted of any overt activity. Her testimony that she did not ''campaign'' for the Union while acting in that capacity warrants an inference that there was no overt activity, and Respondent in its brief tacitly concedes this point.

There is no evidence that Teal, as Respondent's ''legal agent . . . promoted a philosophy not supported by management when . . . she was away from work.'' Respondent, in essence, attempts to justify discipline of an employee because of her private thoughts and unknown off-duty activities while acting as a temporary supervisor. This is without precedent in Board law.

I conclude that Respondent unlawfully told Teal that future assignments for Stanford and Teal as temporary supervisors would be discontinued after the union campaign because of their support of the Union.

[149] R. Br. 420.

JJ. *The Allegations that Respondent Promised Its Employees Unspecified Benefits as in Inducement to Withdraw Their Support from the Union*

Carl (Bud) Milstead

1. The facts

Angela Coleman testified that, just before the election, Milstead told her that Plant Manager Robert Freeland had told the employees that, if they would give him 1 year, and nothing changed, they, i.e., the Company, would pay the Union to come back. I credit Coleman's unrebutted testimony.

2. Legal conclusion

Respondent argues that this statement was too vague to constitute a promise of benefits, citing *Middletown Hospital Assn.*, 282 NLRB 541 (1986), and *National Micronetics*, 277 NLRB 993 (1985). In *Middletown Hospital Assn.*, a supervisor said that she would make changes if given a chance, and would need time to make changes. In *National Micronetics*, a supervisor told employees that the employer had failed to keep up with other companies in the past, and asked the employees to give him some time. The Board held in both cases that the statements were too vague to constitute an unlawful promise of benefits.

The Board has also considered an employer's letter to employees saying that they would always do better without a union, and asking for a year to prove himself. The administrative law judge found that the letter contained an unlawful threat of plant closure. With respect to the other statements, the judge stated as follows, with Board approval:

> With respect to the contention that the letter contains a promise of benefit, the General Counsel relies on [the employer's] plea for the employees to vote no and to give him a year to prove himself. This statement must be read in conjunction with the statement in the preceding paragraph that the employees would do better with him without a union. While no specific action or improvement was promised, there is no plausible explanation for [the employer's] offer to prove himself other than that [he] would use the year without a union to prove himself by showing responsiveness to employees' dissatisfactions which led them to seek representation. I find that the statement conveyed a promise to be responsive to employee needs and violated Section 8(a)(1) of the Act. [Authorities cited. *S. L. Industries*, 252 NLRB 1059, 1076 (1980).]

Milstead's recitation to Coleman of what Freeland had said to employees was more specific than the supervisors' statements in *Middletown Hospital Assn.* and *National Micronetics*, supra. If nothing had changed within a year, the Company would ''pay'' the Union to come back. Whether the employees or the Union would receive this payment is unclear, but the promise was clearly stated in monetary terms. Further, the request for 1 year comes within the rationale of *S. L. Industries*, supra.

Milstead's statement to Coleman was made shortly before the election and must be assessed in the context of Respondent's widespread unfair labor practices, including Milstead's own unlawful interrogation of employees and surveillance of their activities. I conclude that his statement violated Section 8(a)(1) of the Act.

KK. *The Allegation that Respondent Promised Benefits to Employees to Induce Them to Withdraw Unfair Labor Practice Charges*

1. The facts

Elboyd Deal testified that on August 19, James O'Kelly asked Deal to withdraw unfair labor practice charges which Deal had filed against the Company. O'Kelly told Deal that he, O'Kelly, had given Deal 2 days off the prior week without charging him with any absences, and that Deal owed O'Kelly something because of this. O'Kelly denied that this conversation took place. I credit Deal.

There is no evidence that Deal filed an unfair labor practice charge. He did submit an affidavit to the Board. I conclude that this was the meaning of O'Kelly's request, i.e., to withdraw the affidavit.

2. Legal conclusion

Respondent argues that there was nothing unlawful in O'Kelly's request, because he had already given Deal the benefit of 2 days, and, accordingly, was not promising him anything.[150]

It may be argued that O'Kelly's request constituted an implied promise to grant further benefits if Deal complied. However, it is unnecessary to reach this conclusion. O'Kelly's statement took place in the midst of numerous unfair labor practices, and Respondent's manifestation of intense hostility toward the Union. In these circumstances, O'Kelly's solicitation of Deal was per se unlawful without any concomitant promises of benefits. *Animal Humane Society*, 287 NLRB 50, 60 (1987).

LL. *The Allegation that Respondent Instructed Employees to Remove Union Campaign Insignia*

1. The facts

I have found above that, on August 19, Plant Manager Jim Perkins had a conversation with Patricia Boone in which he asked Boone to take off a union button which she was wearing. When she refused, Perkins said that he hoped she would take it off and begin supporting the Company.[151]

2. Legal conclusion

The Company argues that this was a friendly discussion between a supervisor and an employee about the merits of unionism, and that there were no threats. Respondent cites *Vemco, Inc*., 304 NLRB 911, 913 (1991). In that case the Board concluded that an offer by two supervisors to ''trade'' the employees' prounion buttons for antiunion buttons did not constitute unlawful interrogation, since the employees' views were known and there was no accompanying coercion.[152]

The problem with this argument is that it construes the complaint allegation as one of unlawful interrogation rather than an order to remove union insignia. The principal issue is whether Perkins' statement constituted an instruction,'' as the complaint puts it, i.e., an order.

Where a supervisor asked an employee ''as a personal favor'' to stop wearing a union T-shirt, the Board construed this as a ''directive'' for the employee to remove the shirt, and concluded that the employee could reasonably believe that his failure to obey [the supervisor] would result in some kind of immediate or future discipline.'' *Overnight Transportation Co*., 254 NLRB 132, 133 (1981). Where a supervisor told an employer working in a lobby area that she would ''prefer'' that the employee not wear a union button, the Board reversed the administrative law judge, held that there were no ''special circumstances,'' and concluded that the supervisor had violated Section 8(a)(1) of the Act. *Virginia Electric & Power Co*., 260 NLRB 408, 409 (1982), enf. denied sub nom. *VEPCO v. NLRB*, 703 F.2d 79 (4th Cir. 1983).[153]

Although Perkins did not explicitly threaten Boone that she would be disciplined if she did not remove the insignia, he and numerous other supervisors violated the Act in many respects. On the authority of *Overnight Transportation* and *Virginia Power*, supra, I conclude that Perkins' request was unlawful.[154]

MM. *The Alleged Benefit of Allowing Employees to Buy First Quality Goods in Order to Discourage Them from Supporting the Union*

1. The evidence

The complaint allegation is defective in that it omits the allegation that the employees were permitted to buy at a discount. However, this point was thoroughly litigated.

The evidence[155] establishes that Respondent distributed a flier to its employees entitled ''Employee Courtesy Days.'' This authorized employees to buy merchandise on August 8, 9, or 10, at a discount at Respondent's Kannapolis store, where it sells to the public. The flier had 12 coupons on the reverse side. The coupons identified products at a regular price, a sale price, and a still lower price available to the employees.[156] Store Manager Pare testified that 11 of 12 items offered in the coupons were first quality, and that one contained irregulars.

Employees were allowed to shop at the Company store together with regular customers. For the designated days of

[150] R. Br. 250–251.

[151] Supra, sec. II,X,1.

[152] R. Br. 253. The Company also cites *Dynamics Corp. of America*, 286 NLRB 920 (1987), which is inapposite.

[153] In denying enforcement of the Board's order, the court of appeals concluded that there was a possibility of employee conflict over the union in a public area, i.e., that there were ''special circumstances'' justifying the supervisor's request. This factor is not present in the case at bar.

[154] The complaint alleges that Rick Bassinger committed the same violation. No evidence was submitted in support of this allegation, and I recommend its dismissal.

[55] The testimony of the General Counsel's witness Mary Edgison and Respondent's Kannapolis Store Manager Ron Pare.

[156] G.C. Exh. 8.

August 8, 9, and 10, employees could purchase at the coupon price; thereafter, the higher sale price prevailed.

Respondent had held such sales for employees previously, but in November and December. These sales were held in a nearby warehouse, not the retail store. According to Pare, more than half of the products offered during these sales were less than first quality. The Company had also held August sales for the public in its retail store. However, employees were not given a ''preview'' of those sales, as they were in 1991.

Pare contended that in February or March of 1991, he and Maurice Altham, the president of Respondent's retail store division, decided that they needed something to stimulate lagging sales. They decided on a sale in August. They also decided to have a ''preopening'' available only to company employees. This was the first time that employees would be included in a summer sale and was the first time they were offered coupons. Pare argued that including employees in the 1991 August sale would be economically advantageous to the Company. Although this would also have been true regarding prior August sales, Pare admitted, the Company did not previously include them as it did in 1991.

2. Factual and legal conclusions

Respondent argues that it was merely implementing a decision which had been made prior to the advent of the union campaign.[157] The only evidence of the asserted prior decision is the testimony of Pare. There is no documentary evidence, and the asserted decision is contrary to the Company's past practice of holding warehouse sales of predominantly irregular items in November and December where employees could shop. This was the first time that they were allowed to purchase first quality goods at a regular August sale at the discount price available to employees. Pare's admission that prior inclusion of employees would also have been economically advantageous to the Company, but was not practiced., undercuts his contention that a first decision to do so was made in early 1991. Pare's demeanor was not that of a trustworthy witness and I do not credit his testimony.

In light of Respondent's hostility to the union movement, it is reasonable to infer that its first-time offer in 1991 to allow employees to buy first quality goods at an employee discount, about 2 weeks before the election, was intended to influence the employees in the Company's favor in the election. I so find, and conclude that Respondent thereby violated Section 8(a)(1) of the Act.

NN. *The Allegation that Respondent Announced to Its Employees from Mid-June to Mid-July That They Would Receive Additional Pay for Working on Holidays in Order to Discourage Them from Supporting the Union*[158]

1. The evidence

This allegation concerns the Company's change of holiday pay from 8 hours to 12 hours for employees working a 12-hour shift. Respondent's Payroll Supervisor Keith Boothe testified that he received a request from Vice President Ozzie Raines in early December 1990 to calculate the cost of such a change. He replied by memo dated December 14, 1990, that it would cost about $121, million for to effect the change for Easter, Thanksgiving, and Labor Day.[159]

Subsequently, in mid-May, Raines sent Boothe a memo that 12-hour holiday pay would be paid to employees working 7-day schedules. Revisions would follow.[160] Boothe later received a revision from Raines announcing that the 12-hour holiday pay would be paid to employees for Good Friday, Labor Day, and Thanksgiving, for employees working 12-hour shifts.[161]

Personnel Manager Alice Moody prepared a notice announcing these changes. The notice also stated that the July vacations would continue to be covered by vacation pay. Moody was scheduled to leave on vacation on June 14, 2 days after the beginning of the union campaign. She testified that she delivered the notice to superintendents for posting prior to June 14, but was uncertain whether she did so before June 12. Moody did not know when the superintendents posted the notice. She testified that it was her normal practice to post notices of this nature as soon as a change was made. As set forth above, Sherry Smothers testified that notices had been posted in some departments.[162]

2. Factual and legal conclusion

The General Counsel has the burden of proof to establish an unfair labor practice.[163] Respondent has presented persuasive evidence that the change was decided upon prior to the advent of the union campaign. Although the complaint was amended to make the announcement of the change the gravamen of the alleged offense, the evidence doe not clearly indicate that the Company waited until after June 12 to post the notices. Although the holidays specified for 12-hour pay were several months away, Moody's testimony establishes that it was her practice to post these changes as soon as they became effective. Further, there was a reference in the notice to the July 4 pay.

I conclude that the General Counsel has not sustained the burden of proof and shall recommend that this allegation be dismissed.

OO. *The Allegation that Respondent in Written Leaflets Threatened Its Employees that Their Selection of the Union Would Inevitably Lead to Strikes*

1. The evidence

The General Counsel introduced numerous leaflets and letters distributed by the Company during the campaign. In general, they warn employees about adverse circumstances if the Union calls a strike.[164] The General Counsel notes a letter from the Company to employees which reads in part:

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[157] R. Br. 253–255.

[158] The complaint was amended at hearing as set forth above. Originally, the allegation was that on or about July 4 and September 2, Respondent granted its employees additional pay for working on a holiday, to obtain their support. The amendment in effect shifted the allegation from a grant of benefits to an announcement of same.

[159] R. Exh. 126.

[160] R. Exh. 127.

[161] R. Exh. 128.

[162] Supra.

[163] The General Counsel's brief is silent on this allegation.

[164] G.C. Exhs. 5(a)–(j).

> Frankly, we are very concerned about a Union strike occurring in our plants. For several weeks now, the Union has been talking about wanting to be ''10,000 strong,'' they could ''make the Company back off.'' Sadly, it sounds like they are already preparing for a long strike against the Company. I hate to think what could happen here.
>
> If there is no Union, there will be no violent Union strike. I urge you to keep the; Union and Union strikes out of our plants. There is only one way to do that and that is to VOTE NO on August 20 and 21.[165]

In addition, the Company distributed to employees a poster entitled ''Diary of a Strike.'' This document has 12 blocks purporting to predict results in the future. The first block starts negotiations on October 15, 1992. After various disagreements, the Union on April 15, 1993, asks for checkoff, and the Company ask what the Union is ''willing to give up to get it.'' By May 19, 1993, the negotiations are ''hopelessly deadlocked with no agreement in sight.'' A strike begins on June 1, 1993, and the Union puts up picket lines. The Company hires replacements. ''Violence erupts at several gates. Police are called in. Many employees want to go to work but are afraid to cross picket lines.'' Some employees cross the lines with the help of the police, but are told that they have been permanently replaced.[166] Another document tells employees that they do not have to worry about strikes if they ''no.''[167] During the election supervisors carried placards in front of employees listing strikes engaged in by the Union since 1986.

2. Legal conclusion

I have elsewhere found that Respondent violated the Act by telling employees that bargaining would begin from scratch in the context of statements that benefits would be reduced; by telling them that their selection of the Union would be futile; by telling union employees that they would receive lesser wages than nonunion employees because of their union activities; and by promising and granting them benefits in return for their rejection of the Union. Respondent's statements about strikes must be assessed in the context of its other statements.

A review of the Company's predictions in the ''Diary of a Strike'' clearly conveys to employees that, after a ''hopeless deadlock,'' they will be compelled to strike, and even then will not achieve their goals. The Supreme Court has said as to such predictions:

> [A]n employer is free to communicate to his employees any of his general views about unionism or any of his specific views about a particular union, so long as the communications do not contain a ''threat of reprisal or force or promise of benefit.'' He may even make a prediction as to the precise effect[s] he believe unionization will have on his company. In such case, however, the prediction must be carefully phrased on the basis of objective fact to convey an employer's belief as to demonstrably probable consequences beyond his control. [*Gissel Packing Co*., 395 U.S. 575, 618 (1969).]

Respondent's ''Diary of a Strike'' is not based on any objective fact. It simply calculates that the positions of the parties will inevitably lead to a strike, violence, strike replacement, and unemployment of the strikers.

The Board has occasion to pass on employer letters to employees stating the ''risks'' that negotiations might lead to loss of benefits and hardship ''if the tragedy of a strike occurs.'' In agreeing with the Board that the letters violated Section 8(a)(1) of the Act, the Court of Appeals for the First Circuit stated:

> The December 5 letter spoke of the vice-president's personal concern lest the employee and his family face ''real risk'' (underscored) if he makes ''the wrong decision.'' It went on to emphasize the vice-president's concern over the ''possibility that you and your family may be harmed if there are negotiations.'' The risks the employee faced, the letter continued, included possible loss of wages and benefits, the ''tragedy'' of a strike, and possible ''permanent replacement.'' While this litany can be read as projecting an honest belief that the Union will be so irresponsible and unresponsive to its members' interests as to bring about such things entirely on its own, it can also be considered a covert message that, if the Union comes in [the employer] will fight it, and its prounion employees. . . . . In *Gissel*, the Court criticized as improper an employer's ''basic assumption [expressed in messages to employees] that the Union, which had not yet even presented its demands, would have to strike to be heard.'' 395 U.S. at 619. These letters convey a similar basic assumption. [*NLRB v. Hasbro Industries*, 672 F.2d 978, 983–984 (1st Cir. 1982), enfg. as modified 254 NLRB 587 (1981).]

I conclude herein, for the same reasons that Respondent's prediction of strikes if the employees selected the Union was unlawful.

PP. *The Allegation that Respondent Informed Its Employees Represented by the Union that They Would Receive a Smaller Percentage of an Increase in Wages Than Employees at Its Nonunion Plants, Due to Their Support for and Membership in the Union*

This allegation concerns alleged statements made to Respondent's employees at its unionized plants. The Union was engaged in wage negotiations with the Company during the summer of 1991. The record also shows that the Company's employees at its nonunion plants received a wage increase of 5-1/2 percent on September 9. The complaint alleges in the next section (QQ) that the Company made unlawful statements to its nonunion employees who received the September raise.

[165] G.C. Exh. 5(j). G.C. Br. 63.
[166] G.C. Exh. 5(g).
[167] G.C. Exh. 5(l).

1. Sarah Carter[168]

a. *The evidence*

Eden employee Jenny Vires testified that she was approached at her work station in September by Sarah Carter and her assistant, George Pass. Vires knew that the nonunionized employees at Kannapolis had received a raise, and that the Company and the Union were negotiating at Eden. Vires asked why the Eden employees ''didn't get no raise.'' According to Vires, Carter replied that the (Eden) plant was union and only the Cannon (Kannapolis) employees received a raise. Vires stated that the employees worked hard and deserved a raise. Vires herself was not then a union member and said this to Carter. The supervisor replied that it did not matter, and that the plant was unionized. Vires ''argued'' with Carter about the subject for awhile, until the latter discontinued the conversation. In response to a leading question on cross-examination, Vires said that Carter stated the Eden employees would not get a raise right then.

Jenny's brother, Daniel Vires, also an Eden employee, testified about a conversation with Carter in October. Vires had been absent because of sickness for 4 days, and Carter called him to her office. He asked why the Eden employees ''did not get the five and one-half percent,'' and stated that he was referring to the raise at the Kannapolis plants. Vires asked whether he could get 5-1/2 percent if he got out of the Union, and Carter replied, No.

Carter testified that several employees asked her about a raise, and that she had a conversation with Jenny Vires in early September. George Pass was present. Carter stated that Vires asked her about a raise. Carter replied she knew nothing about it—the Company and the Union were negotiating. Carter denied the other statements attributed to her by Vires. She agreed that she had a conversation with Daniel Vires, but contended that it was about a grievance, not a pay raise.

On cross-examination, Carter stated that employees never ask her about raises. She denied knowledge that negotiations were then taking place about wages and other subjects between the Company and the Union. Carter also denied that Jenny Vires told her that the employees were entitled to a raise. She denied knowledge of a union campaign at the Kannapolis plants until after the election, and denied knowledge of the September raise there until October or November.

George Pass corroborated Carter on some details. However, contrary to Carter, he affirmed that the latter told Jenny Vires that the Company and the Union were then negotiating about wages.

b. *Factual analysis*

Jenny and Daniel Vires were both employees of the Company at the time of their testimony, a fact which lends weight to their statements. Sarah Carter's denial of knowledge that the Company and the Union were negotiating is unrealistic, and she was directly contradicted on this point by Pass. She contradicted herself on the subject of pay inquiries from employees. Her other denials are similarly improbable. She and Pass were less believable witnesses than Jenny and Daniel Vires, whose testimony I credit.

2. Harold Hill

a. *The evidence*

This allegation involves Respondent's plant at Fieldale, Virginia, where the employees were represented by the Union. Oscar Clark was the head shop steward. He testified that he had a conversation in the canteen with Harold Hill on about October 4. Clark asked Hill why the Company had given the nonunion plants a 5-1/2-percent increase, but had only offered the unionized employees 4-1/4 percent. Hill replied that Clark knew the answer to the question. Clark responded that he did not know, and asked Hill to tell him. Hill replied that the object was to discredit the Union and drive it out of the mill. Clark said that the Company should get rid of some of the supervisors, and Hill said that the workers were lazy, and that the Union was protecting them.

On direct examination, Hill denied the statements attributed to him by Clark. On cross-examination, he acknowledged that he had heard that the nonunion employees had received a raise, and that one employee asked him about a raise. He agreed that he had conversations with Clark on the work floor, but was inconclusive about talks in the canteen. On further examination, he stated that he heard Clark say a few times that some supervisors should be released, and that he replied that some employees should also go.

b. *Factual analysis*

Hill's acknowledgment of a talk with Clark about the release of supervisors and employees constitutes partial corroboration of Clark. The latter was a current employee at the time of his testimony and was a more trustworthy witness than Hill. I credit his testimony that Hill told Clark the Company offered a lesser wage to the unionized employees in order to discredit the Union and drive it out of the mill.

3. Jim Jefferson

a. *The evidence*

The allegation concerns Respondent's unionized plant at Eden, North Carolina, where Jefferson was the personnel manager. Patsy Turner testified that in early October she asked Jefferson why the Company had given the nonunion plants a 5-1/2-percent raise, but had only offered 4-1/4 percent to the unionized plants. Jefferson replied that the Company was testing the Union's strength, and that he did not think the Union would get 5-1/2 percent.

Barbara Cook testified that she overheard Jefferson say this, and that she responded that the Union would never accept less than 5-1/2 percent. ''You wanna bet?'' Jefferson asked. He added that the employees would be fired if they went on strike. Later, Cook averred, Jefferson told her to tell the others not to repeat what he had said, or ''they might ask him to walk.'' Phillip Edwards corroborated the foregoing testimony.

Jefferson denied the statements attributed to him by the General Counsel's witnesses. On cross-examination, he was repeatedly asked whether employees inquired about the 5-1/2-percent raise for the nonunion employees, and why the

[168] Although the complaint does not allege that Sarah Carter was a supervisor, it alleges that she was one of the Company's representatives who participated in the violation alleged in the complaint. Carter testified that she was a supervisor in the Company's plant at Eden, North Carolina, and I find that she was a supervisor.

unionized employees did not get a raise. Jefferson's replies were evasive. He claimed that he did not know the answers to these questions, although he acknowledged attending some of the wage negotiations between the Company and the Union.

b. *Factual analysis*

Jefferson's professed lack of knowledge of the status of the wage negotiations is inconsistent with his attendance at those negotiations. The General Counsel's witnesses were current employees, and Jefferson was a less credible witness. Respondent argues that there are inconsistencies in the General Counsel's witnesses as to who was present during Jefferson's conversation. I conclude that these are minor. Based on the corroborated testimony of those witnesses, I conclude that Jefferson was asked why the nonunion employees received a 5-1/2-percent raise, while the unionized employees were only offered a lesser percentage. He answered that the Company was testing the Union. Jefferson later requested that this statement not be repeated.

4. Joseph Martin[169]

a. *The evidence*

This allegation also pertains to Respondent's plant at Eden. Patsy Turner testified that, a few days after the conversation with Jim Jefferson described above, Joseph Martin approached her work station and said that the Company was giving a 5-1/2-percent raise to the plants that were not unionized. Turner responded that another employee (Louise Shelton) was not a union member. Martin replied that it was her misfortune to be working in a union mill.

Martin denied the statements attributed to him. His version was that it was Turner who said that the union plants were not getting as much of a raise as the nonunion plants. Martin contends that he did not answer this question, but merely shrugged. When Turner referred to Louise Shelton, Martin just said, ''Poor Louise.'' Martin contended that he did not know when he learned that the nonunion employees received a 5-1/2-percent increase. He did not know when the Eden employees received a raise—someone posts it on the bulletin board. He himself received a raise in January 1992. Martin denied knowing that Turner was a union supporter, and denied seeing a union poster on her locker.

b. *Factual analysis*

Martin's version of the conversation is less plausible that Turner's. Turner was a current employee, and a more truthful witness than Martin. I credit her testimony.

5. James Tinsley[170]

George Cochran was an employee at one of the Company's plants in Eden. He testified that, in October, prior to his shift, he and about 50 union members went to a nearby Holiday Inn where the Company and the Union were negotiating about wages and other matters. The negotiations had been going on for about a year. Cochran stated that the union members walked through the meeting room during a recess, just to ''show their faces.''

When Cochran reported for work that afternoon, he and Tinsley had a conversation. The supervisor asked him whether he had gone to the ''rally'' at the Holiday Inn, and Cochran acknowledged that he had. Tinsley said that the Company would be better off without a union. He added that the employees at Kannapolis got their 5-1/2 percent, and that the Eden employees got nothing because of the Union. Cochran replied that Tinsley was lying, and that employees could not work with someone like Tinsley without a union. Cochran acknowledged that he and Tinsley argued frequently and did not get along.

Tinsley denied having a conversation with Cochran about a wage increase, or the union demonstration at the Holiday Inn. He denied that Cochran asked him about a wage increase, and denied that any other employee did so. Most of the employees he supervised were union members, but none of them asked about a raise or the negotiations. All Tinsley knew about the negotiations, the union visit to the Holiday Inn, or the raise at Kannapolis, he learned from reading the newspaper.

Factual analysis

I infer that the negotiations at Eden and the pay raise at Kannapolis were matters of concern to the employees at Eden. The presence of 50 union employees in the Holiday Inn meeting room suggests this. Tinsley's testimony that none of his employees asked him at about a raise at Eden, or the one given at Kannapolis, is highly implausible. Cochran was a current employee and a more believable witness than Tinsley. I credit his testimony.

6. Harry Slusser[171]

a. *Evidence*

This allegation concerns events at a company plant in Columbus, Georgia, where the Union and the Company had a contract. Wilbert Williams, an employee at the plant, testified that the employees became upset when they learned that the nonunion employees at Kannapolis had received a 5-1/2-percent raise, but that the Company during negotiations for the unionized employees was only offering 4-1/4 percent. Employee meetings were held at the union hall, and a petition was drafted and signed by about 1200 employees. On October 15, Williams and 300 union members went to General Manager Slusser's office. Company Vice President Bill Evans was present. Williams presented the petition to Slusser, who said that the employees were placing their employment in jeopardy, and that they should go back to their jobs. Williams and Local Union President John Rossner were invited into Slusser's office. Williams protested the higher wage given to the nonunion employees at Kannapolis, as contrasted with the lower one offered to the union members.

[169] The complaint was amended at hearing so as to include Martin. He testified that he was a supervisor at Respondent's carpet mill in Eden, North Carolina, and I find that he was.

[170] Tinsley's name does not appear in the pleadings as an acknowledged supervisor. However, he testified that he was a supervisor at Eden, and I so find.

[171] Slusser's name does not appear in the pleadings as a supervisor. However, he testified that he was the general manager of one of Respondent's plants in Columbus, Georgia. I find that he was a supervisor within the meaning of the Act.

About 2 weeks later, on October 30, Williams and Rossner met with Slusser in his office, where there was a discussion about an unrelated subject. Williams asked Slusser whether he had told higher management about the petition, and Slusser replied that he had. Williams again said that the employees in the plant were ''totally upset'' about the fact that the nonunion employees at Kannapolis had been given more than the union employees were offered in negotiations. He asked Slusser the reason. The general manager replied that he should not be saying this, but the reason was the fact that the Columbus employees were organized. Rossner corroborated Williams, including the latter's testimony that Slusser said the employees were not receiving 5-1/2 percent because the plant was organized.

Slusser and Evans testified that, at the first meeting, Williams and Rossner were informed that the wage rates at the unionized plants were a subject of negotiations. Evans acknowledged that, during negotiations, the Company's position was that benefits were the same whether a plant was unionized or otherwise. He ''assumed'' that the employees were upset because the Union had only been offered a 4-1/4-percent increase in negotiations.

Slusser acknowledged having a second conversation with Williams and Rossner. He contended that they wanted to know why the Union had not received a wage increase, to which he again stated that the matter was a subject of negotiations.

b. *Factual analysis*

Slusser did not accurately state the issue presented by the union representatives. It was not the reason why the Union had not yet received a pay raise. Rather, the question presented to him at both meetings was the reason the Union had not been offered the same wage rate as that given to the nonunion employees at Kannapolis. Evans acknowledged that the Company had announced uniformity of benefits as a policy, and assumed that the employees were upset over the lack of it. The presence of 300 employees approaching Slusser on the matter, and 1200 signing a petition, suggests that Evans' assumption was correct.

I credit the General Counsel's witnesses as to the nature of the question put to Slusser—why was the offer to the Union less than the increase granted to the nonunion employees? Respondent's asserted answer—that the parties were still negotiating—is a nonsequitur. The employees' questions to the general manager was consistent with the status of the negotiations, and the increase given to the nonunion employees. Williams and Rossner were current employees, and I credit their testimony as to Slusser's answer—the employees were ''organized.''

c. *Legal conclusions*

The legal conclusion for this section and the next one, section QQ, is given at the end of that section.

QQ. *The Allegation that Respondent Informed Its Nonunion Employees at Kannapolis that They Would Receive a Greater Wage Increase Than Its Union Employees*

1. Don Moose[172]

The scenario for this allegation, which is the reverse of the prior one, returns to Kannapolis. Cynthia Hanes, an employee at one of the Kannapolis mills, testified that she learned in September about her pay raise. Department manager Moose came up to her after she learned this, and asked how she liked the raise. Hanes replied that she was pleased. Moose asked her whether she knew that the union plants did not get a raise. Hanes replied that she was unaware of that fact, Moose responded, ''You all got a raise because [you are] nonunion,'' and walked off.

Moose testified that he learned about the September raise at Kannapolis at a staff meeting a few weeks before the raise. Someone at this meeting asked whether everybody was getting the same raise, and did not mention the Union. Moose assumed that the staff member was talking about the Union. Accordingly, he responded that the Union employees were negotiating for their raise. He denied telling Hanes that the Kannapolis employees received a raise because they were nonunion.

Factual analysis

If the Kannapolis employees had been represented by the Union, they would not have received a raise in September—they would have been ''negotiating.'' Accordingly, what Moose assertedly said to Hanes was literally true—the Kannapolis employees received a raise because they were nonunion.

Hanes was a current employee at the time of her testimony, and more believable than Moose. I credit her testimony.

2. David Cockrell

a. *The evidence*

Sharon Davis, a creeler hand at Kannapolis, testified that Cockrell showed her the pay amounts in September. Davis protested that the warp attendants made more than the creeler hands, who ''do the labor.'' Cockrell replied that Davis was still complaining. ''At least you got a raise—the Union plants didn't get nothing.'' Davis should have been ''thankful or grateful'' for her raise.

Cockrell denied telling Davis that the union plants received nothing. However, he testified that he knew the Union and the Company were negotiating, and that nothing had been ''settled.'' Asked whether that meant that the union employees were not going to receive a raise at the same time that the nonunion employees received their raise, Cockrell evasively replied that he did not know what had been settled. He did not recall Davis' protest about the pay of warp attendants.

[172] The complaint incorrectly gives Moose's last name as ''Moore.'' However, the testimony clearly indicates that individual is the same ''Don Moose'' who has been discussed previously.

b. *Factual analysis*

Davis was a current employee, and had better recall of this conversation. Cockrell could not recall anything about a protest of a Davis' comment on creeler hand and warp attendant pay. I credit Davis.[173]

3. Terry Burris

The facts

Drenia Smith testified that Supervisor Terry Burris informed her about her pay raise in September. He added that the union plants did not get a raise and were not going to get one. The Union was on its way out at Fieldcrest and was ''dying all over the country.''

Burris agreed that he told Smith about her raise. He contended that he did not volunteer any statement about a raise on at the union plants. If asked, he would respond that the raise at those plants was still in negotiation. Burris denied telling Smith that the Union was on its way out at Fieldcrest and was dying all over the country. However, he admitted telling her that unions were on the ''decline'' and were ''dropping off.''

Drenia Smith was a current employee and a more credible witness than Burris. I accept her version of the conversation with Burris.

4. Frank Goforth

The facts

Clafter Jackson testified that Frank Goforth told a group of employees in the smoker about their raises, in September. He added, according to Jackson, that the employees in the union plants had not yet received their increase because they were negotiating, and that the Kannapolis employees would not have received their raises at the time they did if they had been unionized, because they would have been negotiating.

Goforth agreed that he told Jackson and a group of employees in the smoker about their raises. Jackson asked if everybody was getting the same amount. Goforth replied that everybody was getting 5-1/2 percent, but that if Jackson meant the union plants, they were still negotiating. Goforth did not specifically deny saying that the Kannapolis employees would not have received their raises at the time they did if they had been unionized.

Jackson was a current employee, and I credit her unrebutted testimony that Goforth said the Kannapolis employees would not have received their raises in September if they had been unionized.

5. Ted Isom

Current employee Carol Carpenter testified that Supervisor Ted Isom told her in September that she was getting a 5-1/2-percent raise. Carpenter averred that Isom also said that the union plants would not get a raise, and also that it would not be as much as the raise at the nonunion plants. On cross-examination, Carpenter stated that Isom said the Union and the Company were negotiating. In response to a leading question, she was ''pretty sure'' that Isom said the amount of the raise would be determined by the negotiations. On redirect examination, Carpenter reaffirmed that Isom said the union plants would not get as much as the nonunion plants. He also stated that the union plants had not yet received their raise. If they did get one, it would not be as much as the one at the nonunion plants.

Current employee Margaret Weast testified that Isom told her in September that she was getting a 5-1/2-percent raise. He also stated that the union plants had not yet received their raise. If they did get one, it would not be as much as the one at the nonunion plants, and Isom doubted that they would get any raise. Weast responded that if it had not been for the Union, the nonunion plants would not have received any raise.

Isom testified that he told the employees that he thought the Union and the Company were negotiating, but did not deny the other statements attributed to him by Carpenter and Weast, whom I credit.

6. Floyd Goodman

Current employee Willie Ratliff testified that Supervisor Floyd Goodman told him in September that the Company was going to give him ''the biggest raise they had ever given.'' He added that the Eden and Fieldale mills which, Goodman pointed out, were unionized, were not getting a raise. He also noted that the Kannapolis plant was nonunion.

Goodman agreed that he told Ratliff that this was the biggest raise the Company had ever given. He also told Ratliff that the unionized plants had not received a raise, and would have to negotiate for it.

7. Smitty Drumm

Howard Harris was applying for a transfer in October, the month following the raise at Kannapolis. Personnel Manager Drumm told him that the Kannapolis employees had received a raise, but that the Columbus, Georgia (unionized) plant had not received one because it was union and was in negotiation. Drumm denied making the statements attributed to him by Harris. I credit the latter.

Legal conclusions

The evidence establishes that the nonunion employees at Kannapolis received a 5-1/2-percent raise in September, while the Union and the Company negotiated over the matter at plants where the Union represented the employees. The evidence also shows that Respondent never offered a pay raise as high as 5-1/2 percent during the negotiations, and, in fact, that the final pay raise agreed upon was less than that amount.[174] The Company had previously taken the position that the benefits were the same in union and nonunion plants.

As the events of 1991 were taking place, the Company made various statements to its employees. Thus, to its unionized employees the Company stated that they did not receive a raise because their plant was unionized;[175] that the Company offered the Union a lesser percentage in order to discredit the Union and drive it out of the mill;[176] that the Company offered the Union a lesser percentage because it

[173] Respondent argues, that, even if Cockrell said this, it was ''a true statement,'' and, accordingly, not unlawful. R. Br. 291.

[174] Infra.

[175] Sarah Carter; James Tinsley.

[176] Harold Hill.

was testing the Union;[177] that an employee who was not a union member had the ''misfortune'' of working at a unionized plant and thus could not get the raise at the nonunion plants; [178] and that the Company did not offer the same percentage at a unionized plant because it was ''organized.''[179]

At the same time, the Company made statements to the employees who did receive the September raise. Some but not all of these statements were coupled with the assertion that the Union and the Company were still negotiating. The announcements included statements that the nonunion employees received a raise because they were nonunion;[180] that the union plants ''didn't get nothing'';[181] that the union plants were not going to get a raise, were on their way ''out,'' and were ''dying'' all over the country;[182] that the nonunion plants would not have received a raise in September if they had been unionized;[183] that the union plants would not get as much as the nonunion plants;[184] and that the raise at the nonunion plants was the biggest ever given.[185] These statements could reasonably be expected to demean and denigrate the Union in the eyes of the employees. Supervisor Harold Hill was explicit—the Company intended to discredit the Union and drive it out of the mill. Although some supervisors contended that they merely responded to employees questions, others volunteered their remarks. The multiplicity of similar statements shows a pattern of denigrating the Union. Respondent's numerous other unfair labor practices buttress this conclusion. The contention of some supervisors that they truthfully said that the Union and the Company were ''negotiating'' was mere window dressing to cloak the pattern of unlawful conduct—and, even then, the window dressing was not applied in all instances.

I conclude that, by the foregoing conduct, Respondent violated Section 8(a)(1) of the Act. *Rocky Mountain Hospital*, 289 NLRB 1347, 1364–1365 (1988).

RR. *The Allegation that Respondent Threatened Its Employees with Discharge if They Engaged in Lawful Strike Activity*

I have found above that Supervisor Jim Jefferson told Barbara Cook that the employees would be fired if they went on strike.[186] This was clearly unlawful and I so find.

SS. *The Allegation that Respondent More Stringently Enforced Its Work Rules in Retaliation for Its Employees Union Activities*

1. Joan Gulledge

The evidence concerning this allegation is related to the allegation that Respondent issued a discriminatory warning to Patricia Boone, and is considered hereinafter.[187]

[177] Jim Jefferson.
[178] Joseph Martin.
[179] Harry Slusser.
[180] Don Moose.
[181] David Cockrell.
[182] Terry Burris.
[183] Frank Goforth.
[184] Ted Isom.
[185] Floyd Goodman.
[186] Sec. II,PP,3.
[187] Infra.

2. James Allman[188]

These events pertain to Respondent's plant at Salisbury, North Carolina. Brenda Carlton and eight other employees worked in the ''cardroom.'' All of these employees were Union supporters, and wore union insignia. Their supervisor, James Allman, agreed that a ''majority'' of the employees in the cardroom were active union supporters.

Carlton testified that the employees could take breaks as long as their production was maintained. They did so in either the canteen or the smoker near the cardroom. Neither facility had a change machine, and the employees customarily went upstairs to the spinning room, where there was a canteen with a change machine. Allman also supervised the spinning room.

Carlton testified that, in September, Allman told the employees in the cardroom that they needed his permission before going to the change machine in the spinning department. The rule was never enforced.

Allman agreed with Carlton's version of the employees' method of getting change prior to his directive. He contended that he had trouble with one employee in the cardroom and two employees in the spinning room ''leaving their department,'' and told ''all'' his employees not to leave their department without his permission. Allman also agreed that an employee in the weave room was discharged in September for being ''out of his area.''

Factual and legal conclusions

I credit Carlton's testimony that Allman told employees in the cardroom that they would have to get his permission before going upstairs to the change machine in the spinning room. I also credit Carlton's testimony that all the employees in the cardroom were open union adherents.

Respondent argues that Allman's actions were not unlawful because he applied the new restriction ''evenhandedly,'' citing *Burlington Industries v. NLRB*, 680 F.2d 974 (1982), modified 257 NLRB 712 (1981).[189] The court based its rejection of the Board's findings in part on ''tenuous credibility determinations,'' the fact that the employee who was warned to stay out of the inspection department had a disciplinary record, and that there had been complaints about his ''loitering'' in that department before the advent of the Union campaign (id., 680 F.2d at 977–978).

There is no such evidence in this case. There is no evidence of any of the employees in the cardroom or spinning departments with a disciplinary record. Although Allman may have given the same order to all employees in the cardroom, all were union adherents. The union sympathies of the employees in the spinning room—to whom, Allman contended, he gave the same order—are unknown. However, Respondent in other plants disparately applied similar restrictions only to union supporters.[190]

Respondent further argues that the election was over in September, and that there was no connection between Allman's order and union activities. To the contrary, Respondent committed unfair labor practices after the election

[188] The supervisor referred to in this allegation is employed in Respondent's plant in Salisbury, North Carolina, and is not the same individual with the same name employed in Kannapolis.
[189] R. Br. 303–304.
[190] Supra, sec. II,U.

as the record shows, and the dispute between it and the Union has not concluded at the date of this decision.

Respondent's final argument is that Allman's new rule was not enforced. This did not diminish the coercive effect of its promulgation. For these reasons, I conclude that Respondent, by Allman's announcement, violated Section 8(a)(1) of the Act.

TT. *The Allegation that a Supervisor Informed an Employee that He Would No Longer Associate with Her Because She Had Engaged in Union Activities*[191]

1. The evidence

As set forth above, Oreida Clarke testified in support of the allegation that Respondent posted notices threatening Spanish-speaking employees with termination and deportation if they signed union cards.[192] Clarke's testimony was given on April 9, 1992.

Clarke was recalled as a witness on July 13, 1992. She testified that, in late April, a Spanish-speaking employee asked her to request a transfer for him from Personnel Manager Harold Turner. Clarke called Turner about this request. In the course of the conversation, Turner told Clarke that the Company's attorneys had informed him that Clarke had testified for the Union. Turner said that he would not be using her as a translator any more, and that it would be best for Clarke not to associate with him or talk to him on the phone. ''Personnel was saying that [she] was a Union activist,'' and it would be thought that Clarke was seeking information to give to the Union.

Turner testified, and agreed that he had a conversation with one of Respondent's attorneys about Clarke's testimony. Turner made inquiries to one of his supervisors and another company attorney as to whether he should continue to use Clarke as a translator. According to Turner, the latter attorney advised him to continue using her.

Turner agreed that Clarke called him on the phone, and that he told her that it would be best for them not to be seen together. He said this, Turner averred, because he interpreted Clarke's call as social in nature. He denied telling Clarke that a company attorney had advised him not to use her as an interpreter.

Clarke was not used as a translator by the Company after Turner learned about her prior testimony, as both Clarke and Turner agree.[193]

2. Factual and legal analysis

Turner's acknowledgment that he told Clarke that it would be best for them not to be seen together constitutes partial corroboration of her testimony. His denial that he told Clarke that a company attorney advised him not to use Clarke as a translator does not directly meet her averment that Turner simply told her this without reference to an attorney. This is buttressed by the fact that she had not been so utilized. Clarke was a more believable witness, and I credit her testimony.

I also conclude, that by telling Clarke that she should not be seen with the personnel manager any more, and that she would not be used as a translator[194] Respondent thereby violated Section 8(a)(1) of the Act.

The alleged violations of Section 8(a)(3) and (4)

1. Introduction

The complaint alleges that the Respondent issued warnings to employees, suspended them, and discharged them, because of their union activities. In order to establish any of these violations, the General Counsel has the burden of establishing a prima facie case that protected conduct was a motivating factor in the employer's decision to discipline an employee. Once this is established, the burden shifts to the Respondent to demonstrate that the discipline would have been administered even in the absence of the protected conduct.[195]

The complaint also alleges that Respondent engaged in some of these activities because the employees had filed charges or given testimony under the Act. By so doing, the complaint alleges, Respondent also violated Section 8(a)(4) of the Act.

2. The warning issued to Benny McIntyre

a. *Summary of the evidence*

As described above, on June 12, Benny McIntyre announced the beginning of the union campaign on television. Two days later, Temporary Supervisor Lisa Mullis issued a verbal warning to McIntyre for using the freight elevator without carrying any freight.[196]

As also described above, McIntyre suffered from brown lung disease contracted as a result of exposure to lint in one of Respondent's plants, and was thereafter transferred to the washcloth department on the fourth floor as a fixer. The job required McIntyre on occasion to go to the supply department on the first floor to get parts.

McIntyre had difficulty going up and down stairs because of his lung condition. There was a freight elevator in the washcloth department to which McIntyre was assigned. The nearest passenger elevator was located about 200 feet away in another building. A 50-foot ramp, slightly inclined, and four steps had to be traversed. Since McIntyre worked throughout the large washcloth department, a requirement that he use the passenger elevator on occasion would necessitate his walking more than 200 feet. After descending to the first floor of the adjacent building, he would then have

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[191] This allegations found in par. 7(a) of the complaint in Case 11–CA–15006, which was consolidated at the hearing with the other complaints.

[192] Supra. sec. II,I.

[193] Respondent's failure to use Clarke as a translator after her testimony is alleged as a violation of Sec. 8(a)(4), infra.

[194] Although this statement was not alleged in the complaint, it was fully litigated.

[195] *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp*., 462 U.S. 393 (1983).

[196] There was an accident involving a freight elevator in May. The Company thereafter posted a notice on freight elevators: ''This is not a passenger elevator. No persons other than operator and freight handlers are permitted to ride this elevator. Employees violating this rule will be subject to disciplinary action.'' R. Exh. 1. McIntyre signed a form acknowledging his awareness of this rule. There is no definition of ''freight'' in any of the notices. Supervisor Ballou told McIntyre that freight was anything he could not carry comfortably.

to exit that building, and walk back 200 feet to the supply room. Upon obtaining his parts, he would then be required to walk at least another 400 feet on the return trip, and down the steps and ramp, to get back to the washcloth department.

McIntyre testified that, in late May—prior to the advent of the union campaign—Supervisor Gladell Adams told him that he could use the freight elevator when he was going to the supply room or the machine shop.

Adams testified that she saw McIntyre having breathing problems in late May. He needed six rods weighing 5 to 10 pounds. According to Adams, she told McIntyre that he would have to walk down the stairs to the supply room, but could ride the freight elevator back up. Adams contended that she told McIntyre that this exception to the rule applied only to that one instance. However, Washcloth Department Manager Tommy Freeman investigated, and testified that Adams told him that she informed McIntyre he could not ride the freight elevator ''without freight.''

McIntyre testified that Supervisor Zell Ballou had seen him use the freight elevator without carrying any freight, and had not protested. Ballou testified that she saw McIntyre using the freight elevator once, but did not know whether he was carrying freight. McIntyre also testified that he saw other employees using the freight elevator without carrying heavy loads.

On June 14, the day of the warning, McIntyre used the freight elevator to go to the first floor, where he obtained some fuses, batteries, and sewing machine parts which he carried in a bag.

About 45 minutes later, Temporary Supervisor Mullis told him that she was writing him up for violating rule 2 of the rules of conduct, refusal to follow instructions, or insubordinate behavior.[197] McIntyre responded that Supervisor Adams had given him permission to do so, but Mullis said, ''I don't care. I'm telling you not to ride the (freight) elevator.'' There was extensive discussion of the warning among the Company's supervisors, and Department Manager Freeman decided to let it stand.

b. *Factual and legal conclusions*

Adams' version of the May incident that she told McIntyre he would have to walk down four flights of steps to get to the supply room—is unlikely. Further, Adams' contention that she told McIntyre that the permission to ride up was an exception which applied only to that particular instance, is contradicted by Department Manager Freeman—McIntyre could not ride the elevator ''without freight.'' In light of these contradictions, and because McIntyre was a believable witness, I credit his testimony that Adams gave him permission to use the freight elevator.

I also credit McIntyre's testimony that Supervisor Ballou, who partially corroborated him, saw him using the freight elevator without carrying freight and did not object. I also accept McIntyre's argument that other employees used the freight elevator without carrying heavy loads. Although the record is not precise, there does not seem to be much difference in the weight of the freight McIntyre was carrying in June as compared to that in late May.

''Freight'' was not clearly defined, and other employees carried light loads on the freight elevator. I conclude that the elevator rule was an ambiguous one which was not strictly enforced. There is no evidence that any other employee was disciplined for violating the rule.

That McIntyre, who contracted brown lung disease while working for the Respondent, should be selected for enforcement of the rule, is evidence of Respondent's insensitivity to his condition, and, in turn, of its intense antiunion animus. Supervisor Ballou admitted knowledge of McIntyre's union activities. The timing of the warning—2 days after McIntyre opened the union campaign—constitutes additional evidence of Respondent's discriminatory motivation. For these reasons I conclude that the Respondent issued the warning to McIntyre because of his union activities, in violation of Section 8(a)(3) and (1) of the Act.

3. The warnings and discharge of Wendy Ashcraft

a. *The hiring of Ashcraft*

(1) The evidence

Wendy Ashcraft was hired on July 6 as an inspector in the towel printing department. She was discharged about 6 weeks later, on August 16, assertedly because of various infractions while still a probationary employee. The applicability of the Company's rules of conduct to probationary employees is an issue with respect to this allegation.

Ashcraft's supervisor, Chris Wellman, testified that he gave her a ''package of information, material on rules of conduct, transfers, probation material—'' Wellman specified that the rules of conduct were stapled to the front of the package. He stated that he told Ashcraft that the package ''covers everything that she needs to know on Company policy, the probationary, the transfer and that she needs to read it over—it was very important information as to the procedures of the mill.''

The General Counsel introduced a company document on seniority, transfers, promotions, and demotions. It describes a probationary period in relevant part as follows:

> Each new employee is considered as being a probationary employee during the first three months following the date of his initial assignment in a job classification. The purpose of the probationary period is to afford your supervisor an opportunity to evaluate your chances of success at Fieldcrest Cannon through your performance, attendance, and other work characteristics. Upon satisfactory completion of the three month probationary period, you became a regular employee.[198]

The General Counsel also introduced a document entitled ''Fieldcrest Cannon, Rules for Conduct, Safety, and Health.''[199] Also introduced was a copy of the Company's policy on absenteeism.[200]

Wellman testified that he considers a probationary employee's ''overall'' performance in deciding whether to retain the employee. However, he did not testify that the rules of conduct did not apply to probationary employees, and Ashcraft

[197] Rule 2 was a part of a group of rules violation of which could result in immediate discharge. G.C. Exh. 23.

[198] G.C. Exh. 58.

[199] G.C. Exh. 23.

[200] G.C. Exh. 24.

denied that anybody told her that the regular rules did not apply to her during her probationary period. Two warnings issued to Ashcraft cited violations of company rules on smoking privileges and absenteeism.

The Respondent introduced numerous exhibits purporting[201] to document discharges of probationary employees.[202] However, none of these documents states that the discipline was not being administered pursuant to the rules of conduct, and most list the employee's offense as ''excessive absenteeism.'' ''Irregular attendance, absence without permission, and repeated tardiness'' are violations of rule 18 of the rules of conduct.[203]

(2) Factual conclusions

There would have been no point to Wellman's giving Ashcraft a copy of the rules of conduct if they were not intended to apply to her during her probationary period. Based on the citations to the rules in warnings to Ashcraft, and the testimony of Wellman and Ashcraft, I find that the supervisor did not tell Ashcraft that the rules did not apply to her, and in fact that he did apply them to her.

b. *Ashcraft's job performance*

Ashcraft testified without contradiction that Supervisor Wellman and Department Manager Carolyn Brannock complimented her quite often on her good work. They told her that she was doing a very good job. About 3 weeks after her employment, Wellman ''skipped a step'' and gave her a raise which was not due for another 2 to 3 weeks. I credit Ashcraft's testimony.

c. *The smoker and canteen issues*

As indicated, Ashcraft was issued a warning for asserted abuse of smoking privileges. This concerned the location of the smokers and canteens where the employees were permitted to smoke. Just before Ashcraft was hired, the towel printing and sheet printing departments were both part of the sheet finishing division. Employees were allowed to use smokers and canteens in both departments. In June, the Company put the towel printing department under the towel finishing division, while the sheet printing department remained under the sheet finishing division.

Both the towel and sheet printing departments were side by side. No changes were made in the physical layout of the departments, or the supervision. There was no floor marking to indicate the division.

Ashcraft attended a company meeting on July 8, 2 days after being hired. Plant Manager Charles Shuping presided. One of the employees asked whether there had been any change in the break areas. Shuping replied, according to Ashcraft's uncontradicted testimony, that there had been no change, and that employees could continue to use the canteens in the sheet department as smokers. I credit her testimony. Sheet Printing Department supervisor Gene Barrenger testified as late as August 1992 that he continued to allow towel printing employees to smoke in the sheet printing department.

On July 10, Supervisor Barrenger offered Ashcraft a Vote No sticker in the smoker outside the sheet department canteen. She replied that she had not yet made up her mind.[204]

On July 14, Ashcraft attended another company meeting, and then went to a smoker next to the canteen in the sheet printing department. She had used this smoker previously, as had other towel printing employees. Wellman came into the smoker and told her that she could not use it anymore, and to return to her machine.

Wellman testified that Sheet Printing Department Supervisor Barrenger complained to him about Ashcraft's smoking in Barrenger's department. Barrenger, however, testified that his complaint was not Ashcraft's coming to his department to smoke, but that she was attractive, and her presence in the smoker tended to attract his employees there. If she had come there on a lesser number of occasions, this would have been ''fine'' with Barrenger. As indicated, Barrenger testified that there was no rule against towel printing employees smoking in the sheet printing department.

Wellman contended that he told other employees in the towel printing department not to smoke in the sheet department. However, he was contradicted by Shuping, and the employees continued to go there according to Barrenger. Wellman admitted that no other employee received a similar warning.

On July 20, Barrenger again offered Ashcraft a Vote No sticker, which she accepted without comment.

d. *Ashcraft's union activities*

Ashcraft began supporting the Union on about July 24. She passed out union literature, attended union meetings, and her picture appeared in union publications. Wellman admitted knowing that she supported the Union.

On about August 1, Ashcraft received a verbal warning for absenteeism exceeding 8 percent in the month of July. On August 7, she attended another company meeting presided over by Plant Manager Shuping. It was at this meeting, as recited above, that Ashcraft challenged Shuping by saying that some of his statements were contrary to a Board notice in a prior election.

On August 14, Ashcraft went to a different smoker, which she could see from her work station in the towel printing department. According to Supervisor Barrenger, this smoker was near a ''Regginie'' machine in the sheet printing department. Barrenger affirmed that a towel printing machine was next to a Regginie machine and the adjacent smoker. Ashcraft stated that she did not know the smoker was located in the sheet department. As indicated, there were no floor markings to show the division in the departments. Wellman testified that he saw Ashcraft in the smoker, but was too busy to speak to her.

e. *The absenteeism issue*

As indicated, Ashcraft was verbally warned for absenteeism in July. Wellman reduced this to a writing which he dated August 7, listing a violation of ''rule 18.''[205]

[201] R. Exhs. 79, 80.
[202] R. Exhs. 68–72, 145(a)–(o).
[203] G.C. Exh. 23.
[204] As set forth above, I have denied the General Counsel's motion to amend the complaint so as to allege Barrenger's action as a separate violation of the Act. Supra, sec. II,A,8.
[205] R. Exh. 80.

Ashcraft was absent on August 7 for most of the day, and again on August 15. However, she testified on cross-examination that these were ''excused'' absences. The Company's statement of policy on absenteeism states that excused absences do not count against an employee for administration of discipline.[206]

Wellman agreed that he granted permission to Ashcraft to be absent on these occasions. He further agreed that such absences do not count against an employee for disciplinary purposes. Wellman also stated that he does not automatically grant such requests, and that he advises employees if they are having attendance problems. There is no evidence that he so advised Ashcraft on these occasions.

Wellman asserted, nonetheless, that he considered such absences in evaluating the work performance of a probationary employee. However, as I have found, the rules of conduct did apply and were applied to Ashcraft. There is no penalty for a first violation of the rule against ''irregular attendance,'' and a second violation—within 6 months—calls for a suspension of up to 10 days without pay.[207]

f. *Ashcraft's discharge*

Wellman gave Ashcraft the written warning on July absenteeism at the beginning of the shift on August 7.[208] At the end of the shift, Personnel Manager Scott Human told her that she was discharged because of absenteeism.

In the following days, Ashcraft attempted to find out the reason, and finally obtained an interview with Plant Manager Shuping on August 20. He told her that she was discharged because of her absenteeism in July, because she abused smoking privileges, and because she had an attitude that was unsuitable for employment.

Ashcraft testified without contradiction that this was the first time anybody had said anything about her ''attitude.'' Nor is it listed in her service record, which states that she discharged for ''absenteeism in July and poor performance.[209] The service record mentions abuse of smoking privileges, and notes that she was still in her probationary period. Shuping testified that the latter consideration was one of the factors in the Company's decision.

Legal analysis and conclusions

The General Counsel has established that Ashcraft was a union activist, and that she challenged Plant Manager Shuping about one of his statements at a company meeting. Respondent had knowledge of Ashcraft's union sympathies. Its extraordinary animus against the Union establishes a prima facie case that Ashcraft's protected activities were a motivating factor in the discipline of her.

Respondent has not demonstrated that it would have administered the same discipline in the absence of Ashcraft's union activities. Although it has submitted numerous exhibits of discharges of other probationary employees, all but one of them were absent on the day of discharge.[210] Ashcraft, or the contrary, was working up to the time she was terminated.

The alleged abuse of the smoking privilege was pretextual. There was no rule against towel printing employees smoking in the sheet printing department after the departments were separated. Barrenger did not object to Ashcraft's smoking in the smoker next to the sheet printing canteen—he simply did not want her there quite as often, in order to minimize the distraction of his employees. Nothing was said to Ashcraft about this. Ashcraft obeyed Wellman's order to leave the smoker next to this canteen.

On the next occasion of which there was any evidence, she was in another smoker near her work station and near a towel printing machine. There was nothing indicating to which department this smoker belonged, and Ashcraft testified that she did not know it was in the sheet printing department. Although Wellman saw her, he did not speak to her at the time.

Wellman contended that he gave similar instructions about smoking to towel printing employees. However, other evidence from the Company's supervisors shows that there was no such rule. I conclude that the instruction issued to Ashcraft was applied only to her.

The absenteeism issue is similarly pretextual. Although Ashcraft was absent in July—apparently beyond the allowable ''percentage''—the Company's rules do not provide for any discipline until a second offense within 6 months. There was no second offense. Although Ashcraft was absent twice in August, Wellman had excused her, and the Company's written policy states that excused absences are not to be counted for disciplinary purposes. Wellman, who had already warned Ashcraft about her July absences, did not follow his policy of advising employees seeking time off that they had attendance problems.

As for the ''poor performance'' alleged in the service record, the only evidence is that she was a good performer, and was given a raise before the usual time for one. Her alleged ''bad attitude,'' not even mentioned in the service record, in fact was her sympathy for the Union. When Ashcraft challenged the legality of the plant manager's statement in an open meeting on August 7, she precipitated her own discharge, which took place about a week later.

I conclude that the Respondent warned Ashcraft on August 16,[211] and discharged her, because of her union sympathies and activities, in violation of Section 8(a)(3) and (1) of the Act.

4. The warning issued to Perry Hopper

a. *Summary of the evidence*

Perry Hopper is currently employed by the Respondent as a loom fixer, responsible for 72 looms. He has been employed for about 12 years. Hopper was working on the D shift in 1991, which ran from 7 p.m. until 7 a.m. His supervisor was Ellie Hamby. Other shifts followed, and the looms ran continuously.

Hopper began engaging in union activities at about the time the campaign started, on June 12. He wore union insignia, attended union meetings, and made house visits. Supervisor Ellie Hamby knew of Hopper's support of the Union.

[206] G.C. Exh. 24.
[207] G.C. Exh. 23, rule 18.
[208] R. Exh. 80.
[209] G.C. Exh. 47.
[210] Supra, fns. 200, 201.

[211] The complaint alleges the date as August 7, but it was not presented to Ashcraft until August 16. This is not a material variance from the alleged date.

On August 7, according to Hopper, supervisor Hamby ''turned the light on'' for loom 557 on the ''fixer board,'' and wrote that it was producing ''bad tuckings,'' an obvious defect in the cloth. Hopper went to the loom, but could not observe any bad tuckings. He spoke to Sylvia Bridges, the weaver who was operating the loom, and she stated that she did not think there was any problem. Accordingly, Hopper turned off the light for loom 557.

The next 12-hour shift during the day went by, on which there were other fixers. Hopper's next shift began the following evening. Hamby again turned on the loom 557 light, and wrote that it was producing bad tuckings. Hooper again turned out the light, and wrote on the board that there were no bad tuckings. Hamby again turned on the same light. Hopper went back to the loom, saw no bad tuckings, but decided that there was a ''situation'' in that Hamby was affirming a defect that Hopper could not see. Hopper decided to ''change the cutting unit,'' and did so.

He then turned to the adjacent loom 558, which was producing ''wavy cloth'' because of a defect in the airflow. This is a problem usually resolved by maintenance men, who handle more difficult problems. Hopper worked on it for an hour and a half, but could not solve the problem.

Hopper then took a break, and Hamby asked him to come to her office. She told Hopper that she was getting ready to give him a writeup for failing to repair looms 557 and 558. Hopper replied that there was nothing wrong with loom 557, and that 558 had an airflow problem. He told Hamby that loom 558 would require more than one maintenance man to repair it.

Hamby repeated that Hopper had worked on loom 558 for 1-1/2 hours, and had not fixed it. Hopper told her to send ''Joe,'' an experienced fixer, to repair it if he could. ''Joe'' worked on it for 3 hours, ''and it got worse,'' according to Hopper.

Meanwhile, Hamby returned to the loom 557 issue. Hopper called Supervisor Eugene Tucker into the office. Hopper, Tucker, and Hamby then went to loom 557. It was not malfunctioning according to Hopper. ''Is it making any bad tuckings?'' he asked Tucker. ''There are about 16 to 18 hours worth of cloth on that machine. If you show me one bad tuck in that . . . .'' Tucker started laughing, and said that they should just do their jobs. Hopper replied that it was not that simple, because he was about to get a writeup.

The three of them then went to loom 558, which was functioning properly at the time. Airflow problems create intermittent malfunctioning, according to Hopper. David Alridge, who was against the Union, and two other fixers worked on loom 558 during two shifts, and it was finally repaired about 2 days later by three fixers.

No repair work was done on loom 557 during the daylight shift between August 7 and 8, and no one was written up for failure to work on the loom.

Hambry gave Hopper a warning for not repairing looms 557 and 558. Hopper protested to Department Manager Jerry Webster that the warning[212] was unfair.

Ellie Hamby, a former supervisor who was not employed by the Company when she testified, affirmed that she ''flagged'' loom 557 twice for bad tuckings on August 7, rather than once as stated by Hopper. Her 12-hour shift was followed by a 12-hour daylight shift. If the loom was not ''flagged'' by the supervisor on the daylight shift, they ''just let it go.'' Sylvia Bridges, the loom 557 operator on Hamby's shift, did not receive a writeup for producing bad cloth.

The defect again appeared on Hamby's August 8 shift, and Hamby again put it on the board. Hopper fixed it, but Hamby did not know what he did to accomplish this.

Hamby called Joel Lefler, a fixer with 32 years experience, to fix loom 558. She agreed that the problem with this loom might have been caused by an airflow problem, and also agreed that Lefler did not solve the problem. She could not remember when this was accomplished.

Hamby affirmed that Hopper had previously received two writeups, one for being out of the department without permission, and the other for failure to wear safety glasses.[213] She testified that she had received complaints from weavers about Hopper's work performance. However, she never gave him a warning for these asserted infractions. Hopper testified and Hamby denied that she complimented him about his work.

Supervisor Eugene Tucker testified that Hamby asked him to look at a loom which he originally called loom 458. After being corrected that the number was 558, Tucker said that Hamby asked him to look at it, and that it was producing ''slack fillings.'' Various reasons exist for this, including an airflow problem, according to Tucker. He said nothing about loom 557.

b. *Factual and legal conclusions*

I do not accept Hamby's testimony that loom 557 was producing bad tuckings. Sylvia Bridges, the operator, did not think so, and was not written up for producing bad cloth. If the machine was malfunctioning on the August 7 night shift, it is probable that it would have continued to do so during the following daytime shift. However, there is no record of this, and the alleged defect only appeared again on the following night shift.

I credit Hopper's testimony, not denied by Supervisor Tucker, that he asked Tucker to point out any flaws in the cloth on loom 557, and that Tucker merely laughed. I credit Hopper's testimony that there was nothing wrong with loom 557.

Hamby corroborated Hopper's testimony about loom 558. The ''Joe'' referred to by Hopper was Joel Lefler. After he attempted without success to repair the machine, it took several fixers and several days to get this accomplished. The warning with respect to loom 558 was obviously unjustified.

Hopper was a union activist, of which fact the Company had knowledge. Its antiunion animus establishes a prima facie case that the warning issued against Hopper was discriminatorily motivated. The evidence against him by the Company was fabricated, and I conclude that Respondent violated Section 8(a)(3) and (1) of the Act by issuing this warning.

[212] R. Exh. 122.

[213] R. Exhs. 123, 124.

5. The warning and discharge of Osborne Bennett

a. *Bennett's employment history and union activities*

Bennett had been previously employed, and was recalled on June 12. He was assigned as a trainee operator on a towel printing machine, which was 50-feet long, and required five employees, including the operator, to run it. Training time for operators was 8 to 10 weeks. Bennett's immediate supervisor was Chris Wellman who, in turn, reported to Carolyn Brannock. Bennett attended union meetings and wore union buttons.

After a few weeks, Bennett began complaining to his supervisor that he was not getting adequate training. His trainer was from Thailand, and was also training his own cousin. Bennett could not understand the language.

Bennett attended several meetings conducted by Plant Manager Charles Shuping. At one of them, on July 12, Bennett complained about the training and told Shuping that the employees would not have the problems they were experiencing if they could get the Union into the plant. The Company contended that Bennett complained about not getting his wage increases. He was given two raises separated by a short interval.

b. *The events of August 15*

(1) Summary of the evidence

The towel printing machine used a screen and dye to print the designs on the towels. Bennett and the other employees started the machine at about 3 p.m. An hour later, one of the employees (the inspector) reported that there was a hole in the screen, and that dye was leaking onto the towels. There were about 8 dozen defective towels, according to Bennett. He stopped the machine, and reported the matter to Supervisor Wellman.

The normal procedure was to have a fixer repair holes in the screen. However, the fixer was busy, and Wellman himself ''patched'' the hole. He told Bennett to wait 5 minutes and then start the machine. At the end of 5 minutes, Bennett went to Wellman and asked him whether he really wanted Bennett to start the machine. Wellman said, ''Yes.''

Bennett complied with this order, and the machine thereafter produced 12 dozen bad towels. Bennett reported this to Wellman, and told him that the patch had ''smeared on the print part, and it dried up as it was running.'' Wellman contended that there was ''lint under the screen.'' Bennett denied this, and said that Wellman had patched over too far. ''Just pretend it's lint . . . up under the screen,'' said Wellman.

Wellman told Bennett that he would not receive a writeup because he was in his training period. However, if he had been trained, he would have received three writeups, and ''that would have been his job.''

Bennett went back to the machine, and attempted to remove the patch, without success. Wellman told him to let the machine run. Later in the evening, Wellman told Bennett that he had to keep an eye on the machine.

Wellman testified, and agreed that he patched the hole in the screen and told Bennett to wait 5 minutes. He also agreed that he told Bennett he was not going to give him a writeup. Wellman did not mention Bennett's coming to him at the end of 5 minutes and asking whether he really wanted to start it up. The machine again produced bad towels, and ''it didn't seem like they were going to stop.'' Wellman contended that the second bad run was caused by a ''lint spot,'' which obscured part of the design. Wellman claimed that he had notified Bennett about the second bad run, and said that the machine had a lint spot. According to Wellman, Bennett merely replied, ''I've got it.'' Wellman testified that he then decided to do a writeup on Bennett. However, he did not inform Bennett of this fact, and went back to his office to prepare the writeup

Later in the evening, Wellman walked back to the machine. Bennett was sitting at the end of the machine, ''where he was supposed to be'' according to Wellman. However, Bennett was not looking at the towels, but, instead, at a ''Union picture book.'' There were no further bad towels that evening.

Wellman prepared two disciplinary actions on August 15, but did not deliver either of them to Bennett that day. The issue is their timing and sequence. Wellman claimed that he ''started'' to prepare the first one after the second run of towels, prior to seeing Bennett reading a ''union picture book.'' This warning is a preprinted full page and is entitled ''Disciplinary Action Form.'' It lists the two bad runs of towels. The document also, on line 5, refers to a ''previous'' verbal warning for violations of rule 19, ''inefficiency or negligence.''[214] When asked on cross-examination whether this referred to the prior verbal warning (for reading the union picture book), Wellman replied: ''Oh well, written warnings. They're both written warnings. Verbal documentation.''

The second document is less elaborate, and is entitled ''Verbal Documentation.'' It lists Bennett's reading nonwork material while his job was running, and also states that the employee ''on this same day'' had been ''written-up'' for the bad towel runs.[215] Wellman acknowledged that the normal sequence of discipline is first a verbal, then a written warning.

(2) Factual analysis

It is undisputed that the screen had a hole in it, and that Wellman patched it. It is also undisputed that Wellman told Bennett to wait 5 minutes and again start up the machine. I credit Bennett's uncontradicted testimony that, after 5 minutes, he asked Wellman whether he should start up again, and that Wellman told him to do so.

There is also no disagreement that Wellman told Bennett that he would not receive a writeup.

What caused the second bad run? Bennett's explanation was that Wellman patched over too far, and that the patch dried as the machine ran, thus *smearing* the towels. Wellman's version was that a lint spot *obscured* part of the design. On Bennett's explanation, the patch dried while the machine ran, and the defect was cured without further action. However, there is nothing in the record to show how the alleged lint was removed. No further bad runs were reported, and there is no evidence of the removal of any lint. I conclude that Bennett's explanation is more probable, and I credit his reason for the second bad run. The obvious conclusion is that it was Wellman's patching and insistence on re-

[214] R. Exh. 82; G.C. Exh. 23.

[215] R. Exh. 83.

starting the machine after 5 minutes which caused the second bad run.

I credit Wellman's testimony that he saw Bennett reading a union picture book. I note that he did not speak to Bennett about the matter, and that there were no bad towel runs for the remainder of the shift. Wellman's testimony warrants an inference that Respondent knew or suspected Bennett's union sympathies.

I do not credit Wellman's testimony that he started to write up the warning for the bad towel runs before seeing Bennett reading the union picture book. I interpret his evasive testimony on cross-examination as an admission that line 5 in the bad-towel written warning refers to the ''previous'' writeup for reading the picture book. There is no way that the formal discipline form could have referred to ''previous'' negligence which in fact had not yet occurred. Wellman wrote up both documents after seeing Bennett with the Union picture book, and cross-referenced one to the other. As noted, he did not deliver either one to Bennett that day.

c. *The events of August 16*

(1) Summary of the evidence

Bennett testified that Wellman called him into the office the next day and asked him to sign a writeup for producing bad towels. Bennett refused, and pointed out that Wellman had told him that there would not be any writeup.[216]

Wellman then called Supervisor Carolyn Brannock, into the office, and she told Bennett that it was Wellman's responsibility to issue writeups for defective work. Bennett defended his actions, and Brannock told him to ''speak up.'' Bennett asked to see Plant Manager Shuping, and Brannock left Wellman's office to call him. She returned a few minutes later, then went out again, and then returned. Brannock attempted to ''force'' Bennett to sign the writeup, and then told him that he was suspended for ''being loud.''

Wellman and Brannock contended that Bennett was ''ranting,'' and waving his arms. They claimed that he was ''very upset,'' ''wild'' and ''out of control.'' Brannock tried to get Shuping to send a security guard to Wellman's office, but could not reach Shuping. Instead of calling security herself, Brannock waited until the plant manager could send a guard.

Wellman contended that Bennett threatened him—Wellman had better ''watch out,'' ''be careful,'' and ''he didn't know who he was messing with.'' Nonetheless, Wellman told Bennett to go back on the floor. Wellman averred that Bennett was ''loud,'' but not ''screaming.'' Bennett said that Wellman was ''crazy,'' and did not know what he was doing. However, Wellman agreed that Bennett did not leave his chair until Wellman told him to return to the floor. Bennett did not make any gesture indicating that he was about to strike Wellman.

Pursuant to Wellman's order, Bennett stepped out of the office for about 5 minutes. A security guard arrived, and Wellman called Bennett back.

A 30-minute discussion followed in the guard's presence, according to Wellman. Brannock claimed that Bennett then ''calmed down,'' but said it was ''too late.'' Bennett was suspended for ''being loud.''

Bennett denied screaming, waving his arms or threatening anyone. He testified that Brannock asked him to ''speak up,'' and as indicated, he simply was trying to prove his point that the writeup was unfair. When asked on cross-examination whether he ''calmed down'' when the security guard came in, Bennett replied that he was talking normally when the guard entered. The guard escorted Bennett outside the plant. Bennett testified that the guard told him he was not any problem, and that he was just trying to prove his point about the towels. The guard was not called as a witness.

(2) Factual analysis

It is likely that Bennett was ''upset'' when asked to sign a writeup which Wellman had told him would not be issued. However, the Company's evidence that he was out of control in the meeting is not persuasive. He did not leave his chair, and did not make any gestures indicating physical violence, as Wellman admitted. He may have been forceful in making his argument, but this is far from being out of control.

Faced with the security guard's presence for 30 minutes of continued discussion, the Company's witnesses then suggested a change of demeanor on Bennett's part—he suddenly became ''calm.'' This is too contrived to be credible. Bennett testified that the guard said there was no problem with him, and the Company did not call the guard as a witness. I credit Bennett's account of this meeting.

d. *Bennett's discharge*

Bennett attempted to reach Plant Manager Charles Shuping, without success. He finally had a conversation with Personnel Manager Dick Reese, who told him that he had been discharged for running the bad towels. Reese could not talk to him further, Bennett said, because he had ''charges against the Company.''

Carolyn Brannock testified that she prepared a notice of termination which gave producing bad towels and being belligerent and abusive as the reasons for the discharge.[217]

(1) Respondent's other defenses

Respondent contended that it gave the other employee on Bennett's machine a warning for allowing the same 20 dozen bad towels to be produced.[218] It also submitted evidence of other writeups for allowing bad towels. However, although other employees may have received writeups, none was followed by discharge. Wellman agreed that a supervisor had discretion in issuing warnings for bad production.

(2) Legal analysis

Respondent has advanced shifting reasons for Bennett's discharge. This in itself is evidence of discriminatory motivation, under established Board law. Further, neither reason is valid. No writeup at all was warranted for the 20 bad towels, since the second bad towel run was caused by Supervisor

[216] The writeup has ''RTS'' (refused to sign) in the space for the employee's signature. R. Exh. 82.

[217] This exhibit is stated in the transcript as being G.C. Exh. 63. That exhibit, however, refers to another subject. I credit the evidence in the transcript.

[218] R. Exh. 84.

Wellman. This warning was not prepared until Wellman saw Bennett reading a union picture book. The alleged belligerent conduct on August 16 never took place.

Bennett's union activism, his reading union literature, his statement to Plant Manager Shuping at a company meeting that the employees' problems would improve with the arrival of a Union, and the Company's animus, establish the General Counsel's prima facie case. Respondent has not proved that the discipline issued to Bennett was warranted. Accordingly, I conclude that by warning and discharging him on August 16, because of his union activities, the Respondent thereby violated Section 8(a)(3) and (1) of the Act.

6. The warning issued to Shirley Hamilton

a. *Hamilton's union activities and job duties*

Shirley Hamilton, an employee for about 11 years, operated an automatic fitting machine at the time of the hearing. She was given a warning on August 23 which, the complaint alleges, was motivated by her union activities. The Respondent contends that she was warned because of negligent operation of the machine.

Hamilton was an active union supporter, and notified Supervisor Tammy Fox of this fact. She passed out union T-shirts, wore union insignia, and acted as an observer for the Union at the election.

The machine operated by Hamilton measures and cuts the cloth for the sheets, puts on a side hem, cuts and sews the corners, and labels the sheet. The sheets are carried through the machine by a series of interlocking aluminum ''pans,'' which in turn are moved by belts of various widths. Three to nine sheets move through the machine every minute, depending on the size of the sheet.

The machine is long, although the estimates varied.[219] It was 7 to 8 feet in height at various locations, and there was a sewing machine on each side.

The operator's function is to watch the elastic, the hems, and the threads on all four corners. The operator cannot monitor both sides of the machine simultaneously, and must walk around it, according to company witness Brenda DeMarco. She must turn her head away occasionally, according to Hamilton.

A frequent malfunction of the machine is a wrapup. This happens when one of the sides of the sheet does not go through the pans, and the sheet wrapsup inside the pans. A wrapup can start within 10 seconds, although it takes a longer time for the sheet to completely wrapup. Wrapups occur ''all the time,'' according to former fixer Walter Wagner, ''every day'' two or three sheets at a time, according to Diana Hamilton.[220]

There are a series of buttons on each side of the machine designed to stop it. One, called the ''stop'' button, will not stop a wrapup immediately. Instead, the machine will ''continue the cycle,'' and the sheets will continue to wrapup until the cycle ends. Another button, the ''emergency'' button, may stop the machine immediately.[221] However, company witness Brenda DeMarco was instructed not to push the emergency button, since this might damage the machine. Wagner affirmed that even the emergency button would not stop the machine on occasion, and that the power had to be shut off.

Another damage caused by wrapups is breakage of the belts which move the pans. Walter Wagner affirmed that such breaks occur. He was a fixer for the machine that Hamilton operated, although on a different shift. Wagner stated that an inside belt, which moved the pans on that machine, had a split in the seam which was 3 inches wide. The normal width of the belt was 8 inches, although such belts become narrower with wear. Hamilton added that the belt was frayed. Wagner testified without contradiction that the Company's policy was not to repair worn belts, but simply to replace them when they did break. He testified specifically about another operator who had a hole in one of the belts. Her foreman told her to keep running the machine until the belt broke. The reason for this policy, according to Wagner, was the ''down time'' required to replace a belt, and the expense.

Because of the frequency with which the machine produced bad hems, the Company employed employees to repair them. Diana Hamilton had responsibility for four machines, including Shirley Hamilton's. She had two sewing machines, one between Hamilton's and Brenda DeMarco's machines, and the second one between two other machines. The one next to Hamilton's machine was 5–6 feet away. Although the operators normally place sheets with bad hems in ''buckets'' which Diana Hamilton picks up, they ''all'' discuss the bad hems with her so that she does ''not have to waste a whole lot of time looking for what is wrong.''

b. *The wrapup on Hamilton's machine*

(1) Summary of the evidence

Diana Hamilton testified that on August 23 Shirley Hamilton brought her some sheets to show her what the machine was doing. Shirley did not talk to her, but just showed her the sheets. Shirley then turned around back towards her machine, at which time the sheets began wrapping up. Diana commented, after Shirley turned, that Tammy Fox had just offered her a job on another shift. Shirley was back to her machine ''in two steps'' and hit the ''stop'' button. However, the machine continued to cycle until three sheets had wrapped up. Diana testified that two to three sheets can wrap up if they are of the smaller size.

Shirley Hamilton testified that she hit the stop button two or three times, without stopping the machine, and then pushed the emergency button. By then, three sheets had wrapped up and a belt had broken.

Brenda DeMarco gave a different version of the incident. She was talking with her husband, Philip DeMarco, at her machine for ''5 minutes.'' Shirley was talking with Diana for ''5 minutes.''

Philip DeMarco was uncertain how long Shirley and Diana were talking. He heard a ''loud pop,'' and started for the machine. However, Shirley ''beat him to it,'' and stopped the machine. He investigated, and determined that a belt had broken. He did not speak to Shirley Hamilton.

[219] Shirley Hamilton stated that the machine was ''91'' feet long, while company witness Brenda DeMarco, who operated a similar machine alongside Hamilton's, said that it was ''20'' feet long. I conclude simply that it was a long machine.

[220] Diana Hamilton, a repairer of bad hems, is not related to Shirley Hamilton.

[221] Testimony of Brenda DeMarco and Walter Wagner.

Hamilton testified that usually an operator informed a supervisor about an incident like this. However, both Shirley and Diana Hamilton stated that Philip DeMarco left ''immediately'' to inform Supervisor Tammy Fox. DeMarco agreed that he was the first person to report the matter to Fox. On the other hand, Fox testified that Shirley Hamilton made the first report, and that DeMarco followed her. DeMarco told Fox that Shirley Hamilton was not watching her machine, according to Fox.

Fox went to the machine, and asked Shirley Hamilton what she had been doing. Hamilton replied that she was ''spreading her hems.'' Fox affirmed that she asked Hamilton whether she was watching her machine, and that Hamilton failed to state that she was. Shirley Hamilton, on the other hand, testified that she replied, ''yes,'' to this question.

Fox then sent Hamilton home, because the machine could not be fixed before the end of her shift. The following day, Fox issued a written warning to Hamilton for not watching her machine.[222] According to Fox, this action would not have been taken if Hamilton had affirmed that she was watching her machine. The supervisor stated that Hamilton was not watching her machine because she, Fox, had never seen this happen before. Fox asserted that she had no knowledge of whether anything was wrong with the belt on Hamilton's machine. Company official Eddie Raper, who examined the machine, said that he did not know of any ''main'' belt breaking previously, and that the accident would not have happened if Hamilton had been watching.

Walter Wagner testified without contradiction that he did not know of any prior warning before a wrapup or the breaking a belt. Diana Hamilton affirmed that 2 days after Shirley Hamilton's belt broke, Brenda DeMarco showed Diana a belt on DeMarco's machine with a hole in it. The belt broke 3 weeks' later, and two sheets wrapped up. DeMarco did not receive a warning. Shirley Hamilton testified that relief operator Reece Harris broke a belt on Hamilton's machine on September 18, but that Philip DeMarco did not report it, and that no warning was issued. Harris and DeMarco denied this.

(2) Factual and legal conclusions

Diana Hamilton testified that Shirley Hamilton showed her some sheets without engaging in conversation, and then turned back to her machine. Brenda DeMarco, however, asserted that Shirley and Diana were talking for 5 minutes—which Brenda was doing with her husband, Philip. Diana Hamilton was a current employee testifying against her own interest, whereas Brenda DeMarco opposed the Union. I credit the version of Diana and Shirley Hamilton.

Shirley was not lethargic when the sheets began wrapping up. She was back to the machine ''in two steps'' according to Diana Hamilton. Philip DeMarco admitted that Shirley ''beat him to it.'' As Brenda DeMarco stated, employees had been told that pushing the emergency button might damage the machine. Shirley pushed one of the stop bottoms—after, all, they were there on the machine. It continued to cycle, however and produced three wrapups and a broken belt. Wagner's testimony on extended examination shows that it was the 8 inch belt with the 3-inch hole which was the one that broke.

I conclude that there was nothing negligent in what Shirley Hamilton did. She showed some sheets with bad hems to Diana Hamilton, and then turned back to her machine. What happened thereafter was not unusual. A wrapup started and continued to cycle until three sheets had wrapped up and a belt had broken. Although Tammy Fox contended that this had never happened before, she was contradicted by Diana Hamilton and Walter Wagner, whom I credit. Raper attempted to make a distinction between ''main'' belts and smaller belts. However, this is contrary to Wagner's testimony that it was company policy to let belts—of whatever size—simply break before replacing them.

According to Philip DeMarco, he was the first to report the incident to Tammy Fox, while the supervisor contended that Shirley Hamilton was there first. I credit DeMarco, as corroborated by Shirley and Diana Hamilton. DeMarco told Fox that Shirley had not been watching her machine. I also credit Shirley Hamilton's testimony that she told Fox that she had been watching her machine, rather than the evasive response attributed to her by Fox.

I conclude that wrapups happen regularly, the breaking of belts less frequently, and that employees are not normally disciplined for it. The warning to Hamilton was the first of its kind for this type of incident.

Shirley Hamilton agreed that she had received a prior warning in 1985 for not watching a labeling machine.[223] Hamilton noted that this warning was issued immediately after the union campaign in 1985. I consider it as remote in time and of little relevance, taking into consideration the other evidence in this case.

In sum, Hamilton was operating her machine in a customary manner. Similar incidents happened routinely, without employee discipline. The General Counsel has established that Hamilton engaged in union activities, that Respondent had knowledge of it, and that it had antiunion animus. Respondent has not rebutted this prima facie case, and violated Section 8(a)(3) and (1) by its discriminatory warning of Hamilton.

7. The warning and discharge of Ronald Teeter

a. *Summary of the evidence*

Ronald Teeter was employed on May 1 as a can hauler in a cardroom at one of Respondent's spinning mills. The content of the cans was a product called ''sliver.''[224] This is an intermediate product in the transformation of raw cotton into yarn. It is about 1-inch thick, soft, and is coiled into large cans by the drawing machine which produces it. This process was repeated several times by twisting coils of sliver together. Ultimately, a service operator carried full cans up to the second or third floor, where the sliver was spun into yarn. The operator then brought the empty cans down to the drawing machines on the first floor. The drawing machines shut down automatically if there were no empty cans.

Teeter worked with a partner, Richard Bennett, on the 7 p.m. to 7 a.m. shift. He became involved in the union organizational effort early in the campaign. Teeter wore union insignia, attended meetings, and passed out leaflets. I have

[222] R. Exh. 32.

[223] R. Exh. 33. The employee's named is listed as ''Shirley Gainey.''

[224] Pronounced ''slyver.''

found that Supervisor Bobby Eagle told Teeter that Eagle had union withdrawal cards, and unlawfully told him not to talk about the Union on the job.

According to Teeter, he was told to keep the floor as clean as possible, but was not given any specific instruction on what to do if the floor was not absolutely clean or empty at the end of a shift. Teeter affirmed that he was taking some empty cans downstairs just after 7 a.m., the end of his shift, soon after being hired. Department Manager Paul Yost told him to be outside the building and the gate by 7 a.m. or he would run the risk of being locked in.

After denying on direct examination that he said this, Yost testified on cross-examination:

> He's [the employee] not going to stay until 7:00 a.m. to clean up no floor. When 7:00 a.m. comes the shift ends, he goes home regardless of the condition of the job and the floor is filled up or not.

According to Supervisor Bobby Eagle, if the drawings ''doff out'' near changing time, ''they [the employees] just push them over to the elevator and the next shift will take them up . . . no problem on that.'' This testimony was repeated in substance by Respondent's witnesses Paul Knox, a drawing machine operator, and Sam Smith, a service operator.

On July 31, Bobby Eagle gave Teeter a verbal warning for not keeping the floor clean.[225] The next day, Teeter scratched his shin while pulling some trucks. After unsuccessful attempts to doctor it at home, he reported it to the Company's nurse. Teeter received a verbal warning for not promptly reporting an on-the-job injury.[226]

On August 9, Bobby Eagle issued a written warning to Teeter for leaving 12 cans of sliver on the floor ''at changing time.''[227]

On August 23, near the end of the shift, Teeter was unable to get an elevator to take some cans of sliver upstairs. Uncertain of what to do, he asked fixer Bobby McNeil, who advised him to leave it on the floor. The next day, Eagle issued a written warning and a 1-day suspension to Teeter for not having empty cans ready for the drawing machines, and for having full cans not taken upstairs—both ''at changing time.[228] Teeter told Eagle that Yost had told him to be out of the building by 7 a.m. Eagle did not respond. However, he informed Teeter that, when he returned from suspension, he would be promoted to the job of drawing tender, at increased pay. Upon Teeter's return, Bennett was absent, and Teeter continued as a can hauler until September 2. Eagle told him that he would have 6 weeks to learn the new job. Teeter was discharged 2-1/2 weeks later, on September 13.

Teeter testified that he had training during the next week and a half from four different employees at different times. After they had run their jobs, they would ''stay over a little bit and help.''

Teeter reported for work at 7 p.m. on September 12, and worked with Paul Knox until about 11 p.m. Thereafter, he worked with Todd Stubbs[229] on machines 7, 8, 9, 10, 11, and 12. There were no cans for extended periods of time, and, as indicated, the drawing machines shut down automatically. Teeter recorded the downtime on a piece of paper, and gave it to Stubbs. Respondent's record of downtime for the evening shift on September 12 shows that machines 7 through 11 were each down once for periods of time ranging from 28 to, for two machines, 120 minutes.[230]

Teeter went to the canteen several times during the downtime. Knox and Stubbs simply sat at the idle machines, waiting for the cans. Finally, tired of this, Teeter went upstairs to get the cans himself. Paul Knox testified that he himself had gone to get empty cans when the can hauler failed to supply them, and did not receive any warnings.

Teeter returned with the cans, and was sliding them into the drawing machine, when Eagle told him that he was suspended pending discharge. The termination notice was given to Teeter the next day. It states that he was on four breaks ranging from 30 to 45 minutes each, was then in another department for 28 minutes, and was thereby ''neglecting his job.'' The notice concedes that Teeter said he was ''trying to help his job.[231] Teeter asked how he could be neglecting his job, when there were no cans and the machines were not operating. He said that he went upstairs to get cans, and Bobby Eagle retorted that getting cans was not his job.

Eagle testified that Paul Knox, pursuant to Eagle's instructions, watched Teeter and recorded his absences on a piece of paper. Knox, on the other hand, merely testified that he verbally complained to Knox about Teeter's absences. Four of the recorded downtimes—including the two at 120 minutes each—began at 7 or 8 p.m.[232] This was the time that Knox was working with Teeter. Stubbs, who worked with Teeter for about 8 hours, was not called as a witness.

b. *Factual and legal conclusions*

The complaint alleges that Teeter was discriminatorily warned on August 23.[233] The reason for the warning was leaving cans on the floor ''at changing time.'' But every one of the Respondent's witnesses on this issue—including two supervisors—admitted on cross-examination that the shift ends at 7 a.m. As Supervisor Eagle testified, the service operators just push the cans to the elevator, and the next shift takes care of the matter. ''No problem.''

Based on Supervisor Eagle's statement to Teeter that Eagle had union withdrawal cards, and his unlawful statement about the Union, I conclude that Respondent had knowledge of Teeter's union activities. Respondent had animus, and the reasons for the warning are obviously pretextual. I conclude that, by issuing it, the Respondent violated Section 8(a)(3) and (1) of the Act.

The same conclusion is warranted with respect to the discharge. As Teeter argued to management, he could not have been neglecting his job if the drawing machines were not running because of the absence of cans. By going to get cans he was in fact assisting the job—something which Knox admitted having done himself. Although Eagle contended that

[225] G.C. Exh. 15.

[226] R. Exh. 28.

[227] G.C. Exh. 17.

[228] R. Exh. 9.

[229] Teeter identified the employee as ''Todd Steel,'' but later corrected this.

[230] R. Exh. 56.

[231] G.C. Exh. 18.

[232] Although ''a.m.'' or ''p.m.'' is not recorded on R. Exh. 56, a starting downtime of ''7'' to ''8'' must have been in the evening, since the shift ended at 7 a.m.

[233] The 1-day suspension is not alleged.

his department had strict break rules, this assertion is inconsistent with evidence that break rules were not strictly enforced.

I conclude therefore that the asserted reasons for the discharge were pretextual, and that Teeter was discharged because of his union activities, in violation of Section 8(a)(3) and (1) of the Act.

8. The warning and discharge of Roy Walters

a. *The warning*

(1) Summary of the evidence

Roy Walters was a ''beam doffer.'' His job consisted of transporting ''beams'' of yarn from one location to another. The beams were about 5-feet long, 4-feet wide, and weighed 300 to 500 pounds. They were transported on small trucks moved by the beam doffer. Walters' immediate supervisor was Windy Black.

Walters was active in the union campaign. He attended union meetings, distributed literature, and appeared for the Union on television and in the newspaper. Supervisor Mike Bumgarner testified that he knew Walters was a ''strong'' union supporter.

On August 19, Walters injured his leg while transporting some beams. ''Frank'' (possibly Supervisor Frank Goforth) told him to go home, soak his leg, and come back the next day. Walters complied, and worked the next day, August 20. His leg did not hurt until the shift changed, and he said nothing. Walters did not work the next 2 days, and reported on August 24. He told Windy Black that his leg still hurt, but offered to work 4 hours. She told him to go home.

Walters came to work on Sunday, August 25. Some beams were on the floor. Windy Black sent him to the medical department, and provided a ride for him. A company nurse examined him and prepared a written report, finding ''redness & soreness in left lower leg.'' An ice pack was applied. Limitations on work were listed as ''less walking for the rest of the shift, and elevation of the leg as much as possible.''[234] Walters testified that the nurse said he had pulled a ligament.

Supervisors Black and Goforth signed an accident investigation report, describing the accident a ''small red area on left leg,'' with advice to beam doffers on how to avoid such accidents.[235] Black transmitted this advice to other beam doffers.

Black claimed at the hearing that the nurse told her there was no redness or soreness in Walters' leg, and that there was nothing wrong with the leg. Accordingly, she issued a verbal warning to Walters on August 25 for leaving eight full beams on the floor with three ''warpers down waiting on empty beams.''[236] This was the first warning Black had issued to Walters, although he had previously been issued one by another supervisor. Black told Department Manager Jerry Helms that Walters had a ''negative attitude.''

(2) Factual analysis

Black's testimony that the nurse told her there was nothing wrong with Walters' leg is unbelievable, considering the nurse's and Black's own written reports about the injury. I conclude that Walters' leg was still injured on August 25, and that he was then capable of only limited duty for the remainder of the shift, as stated in the medical report.

b. *The discharge*

(1) Summary of the evidence

The Company discharged Walters because, it contended, he willfully damaged company property by throwing a cup partially filled with coca cola into a container filled with yarn. Walters testified that he threw the cup into a trash can.

Walters testified that, on September 11, he was returning from a break on an elevator, carrying a plastic cup partially filled with ice, but without any coca cola. He was not transporting any beams. As he left the elevator, Walters made two steps toward a trash can near the elevator, and threw the plastic cup toward the can. He described the size of the opening of the trash can, and affirmed that it had a green trash bag in it. To the left of the trash can was a container of white, processed yarn.

Walters gave conflicting testimony on the distance of the trash can from the elevator, and the distance of the yarn container from the trash can. I concluded at the hearing that he was incapable of estimating distances. Accordingly, after a visual demonstration in the hearing room utilizing actual distances, Walters affirmed that the trash can was about 15 feet from the elevator, and that the yarn container was about the same distance, 15 feet, from the trash can. The two containers and the elevator thus formed a triangle. Walters described the trash can as about 2-feet high and 2-feet wide, while the yarn container was about 6-feet long, 6-feet wide, and about 5-feet high. Walter testified that the yarn container was not quite filled up, but that he could see the yarn.

As Walters was in the act of throwing the plastic cup toward the trash can, Supervisor Mike Bumgarner emerged from around a corner. Walters went to work, but recalled that he had not heard the cup entering the trash can. He returned to the corridor, and saw the cup in the trash can.

Bumgarner came to Walters with a prepared writeup alleging that he threw the drink on the yarn, and ''forced'' him to sign it. The acknowledgment states that the employee received the document and understood its meaning.[237]

Mike Bumgarner asserted that the trash can was 4 feet from the yarn container and was 4-feet square, but that it had a lid on it. The dimensions of the yarn container were somewhat larger than the dimensions described by Walters. Respondent submitted a ''recent'' photograph in which the receptacles had been ''repositioned.''[238]

Bumgarner claimed that he saw Walters pull some beams out of the elevator, holding an 8-inch cup in his teeth, half full of coca cola and ice. None of the coca cola dripped out of the cup onto Walters. He let go of the beams, and ''threw'' the cup into the air. Bumgarner asserted that the cup was thrown ''towards'' and ''on'' the container of yarn. None of the coca cola spilled onto the floor—it was all in the box of yarn.

Bumgarner said nothing to Walters at the time. He went upstairs to Supervisor Frank Goforth's office, and asked him

[234] G.C. Exh. 35.
[235] G.C. Exh. 36.
[236] R. Exh. 59.
[237] R. Exh. 15.
[238] R. Exh. 63.

to come downstairs and inspect what Bumgarner had assertedly seen. Goforth followed him down. The total elapsed time was 2 minutes from the time Bumgarner saw Walters. Goforth and Bumgarner allegedly saw three spools of yarn damaged by coca cola. However, there was no cup. Bumgarner took the spools to the office of Superintendent Jerry Helms, could not find him, and then prepared a writeup suspending Walters. Bumgarner asserts that he then went back to the area to look for the cup, but could not find it. He did not look behind the yarn container, nor into the trash can. Bumgarner contended that there was a lid on the trash can.

Bumgarner agreed that, when he presented the writeup to Walters, the latter asked why he was being suspended. ''For damaging company property,'' Bumgarner answered. ''What property?'' Walters asked. ''Yarn,'' answered Bumgarner. However, Bumgarner admitted that he did not show the allegedly damaged yarn to Walters.

As indicated, Walters testified that, after he threw the cup into the trash can, he recalled that he did not hear it land. Accordingly, he went back and saw it in the trash can. On cross-examination, Walters was shown his pretrial affidavit and was asked whether it said; ''Mike [Bumgarner] told me to go home, and that Jerry Helms would decide what to do and whether I still had a job. Before I left, I went back and checked both the trash can and the yarn box.''[239] There was a cup in the trash can, according to Walter's testimony on cross-examination—only one.

Bumgarner asserted that he, Helms, and other company officials including M. D. Ford went back again and found more damaged yarn. Helms testified that Bumgarner reported to him that Walters ''slung'' the cup across the floor as if he were ''mad,'' that most of ''it'' went into the yarn box, but that some went on the floor. Helms examined the yarn box himself, and found four or five spools which were ''completely'' damaged, and others partially damaged.

The next day, Helms and Personnel Manager Drumm had an interview with Walters. Helms contended that he showed Walters the damaged yarn, and that Walters admitted throwing it into the yarn box. Under the circumstances he had to discharge Walters. The latter assertedly replied that Helms had to do what he had to do, and Helms did so. Helms also agreed that Walters told him he had been aiming at the trash can. If this had been Walters' intent, Helms maintained, he would not have discharged him.

Walters denied on cross-examination that he admitted throwing the cup into the yarn box, and denied that anybody ever showed him any damaged yarn.

Respondent's witnesses agreed that empty yarn boxes occasionally have trash at the bottom.

(2) Factual conclusions

Mike Bumgarner's description of the cup throwing is improbable. How could Walters have held an 8-inch cup half full of liquid and ice in his teeth, while pulling some heavy beams, without spilling it on himself? And how could Walters have thrown such a cup 15 feet through the air without at least some of it spilling on the floor? Yet this what Bumgarner asserted. Helms contradicted him, testifying that Bumgarner reported that some went on the floor.

Bumgarner did not exercise his supervisory authority to challenge Walters on the spot. Instead, he went upstairs to get a witness, Frank Goforth. Although they assertedly found yarn damaged by coca cola when they came back, they could not find any cup. Although Bumgarner contended that there was a lid on the trash can, he did not bother to look inside. Nor did he look behind the yarn box. Walters' testimony that he came back and saw one cup in the trash can is unrebutted, since Bumgarner did not look there. Respondent speculates that Walters returned to the scene and removed the cup from the yarn box.[240] This begs the question of location of the cup. And why did he not remove the damaged yarn? Further, this theory is unlikely, since Bumgarner and Goforth were back in 2 minutes, and there is nothing to show that Walters could have returned, found and removed the cup and disappeared in less time than that. The most probable explanation is that Walters did see the cup in the trash can, and I accept his uncontradicted testimony—the only evidence in the record—that he did. I credit Walters' testimony that the trash can had a green trash bag within it, and from this I infer that it did not have a lid.

I also note that Bumgarner admitted that he did not show any damaged yarn to Walters. I credit Walters' denial that Helms or anybody else ever showed him damaged yarn, and his denial that he admitted throwing the cup into the yarn.

In essence, Walters was never shown proof of his alleged wrongdoing. Bumgarner did not challenge him at the time of the asserted offense, and prepared the writeup without further questioning. I accept Walters' description of the cup throwing incident.

(3) Legal conclusion

Walters' publicized union activities, Bumgarner's admission that he knew of them, and Respondent's antiunion animus establish the General Counsel's prima facie case. The facts show that the reasons advanced by Respondent for the warning and the discharge were pretextual. Accordingly, I conclude that Respondent, by both such actions, violated Section 8(a)(3) and (1) of the Act.

9. The warning issued to Patricia Boone

a. *Summary of the evidence*

The complaint alleges that Respondent issued discriminatory warnings to Boone on September 18, 19, and 20. Boone was union activist, and, as described above, issued a letter comparing union and nonunion benefits, to which the Company objected. In addition, she was unlawfully requested to remove union insignia.

The warnings concern asserted violation of the Company's break policy. Boone testified that the normal break period was 15 minutes before lunch and 15 minutes afterwards. This was corroborated by former plant manager, James Perkins Jr., and various other supervisors. However, Boone added that the actual practice was that some employees took breaks as long as 30 minutes, once or twice a day.

Boone testified that she attended a company meeting run by Perkins. He outlined the break rule, but said that he did

[239] Respondent contends that this establishes that Walter went back to the area after Bumgarner gave him the writeup.

[240] R. Br. 374.

not enforce this rule as long as the employees kept their production up and the job up, and did not abuse the break rule.

Perkins was asked about the break rule on direct examination, and stated that it was his policy ''not to adhere strictly'' to it although the total time should not exceed 15 minutes before lunch or 15 minutes afterwards. Perkins did not testify specifically about what he said at the employee meeting. On cross-examination, he agreed that it was possible that an employee might exceed the limits. He also agreed that it was not supervisory policy to time employees on their break periods. Company Supervisors Tangie Safrit and Joan Gulledge stated that they did not normally monitor break periods, although they would take action if they happened to notice an infraction.

As described above, Peggy Jordan testified that an employee could go to the canteen whenever she choose, as long as her production was maintained. She was corroborated in this testimony by Supervisor Don Moose.[241]

On September 17, Boone was working in a temporary area because of the absence of work in her regular area. She took her regular break, and then recalled that she had forgotten some of her supplies at her regular area. When Boone returned, Supervisor Tangie Safrit told her that she had taken a 30-minute break, and that Safrit would have to monitor her breaks thereafter. Safrit testified that she told Boone that the latter had been gone for 20 minutes. She acknowledged that Boone told her that she had to return to her regular area for supplies. Safrit told Fill-in Supervisor Joan Gulledge about this incident. According to Safrit, Boone was a good employee and kept her production up. Safrit contended that her statement to Boone was not disciplinary in nature.

On the next day, September 18, Boone took her normal morning break from ''approximately'' 8 to 8:15 a.m. Some of the employees who were there when she arrived were still there when she left. Upon her return to her job, Supervisor Gulledge gave her a verbal writeup for being absent for 17 minutes.[242] Boone asked why the other employees in the smoker were not disciplined, and Gulledge replied that she ''just happened'' to notice when Boone left and returned. Gulledge warned Boone not to leave her job again before lunchtime.

Gulledge testified about this incident. She was working about 25 feet from the smoker, which she could see. Gulledge contended that Boone went in first, and other employees ''a couple of minutes'' later. Gulledge was asked: ''You didn't watch to see whether they [the other employees] went over their breaks?'' ''Right, that's exactly right,'' Gulledge replied. Gulledge agreed that Boone was a good worker.

Boone complained to Aaron Owens, the scheduled replacement for Perkins, that the other employees had not been disciplined. Owens told her later that Gulledge said Boone had received a verbal warning the prior day (from Tangie Safrit), and, accordingly, that Gulledge's warning would remain on Boone's record.

[241] Supra, sec. II,V,5.

[242] A calendar of Boone's attendance states that she was ''counseled'' for being in the smoker 18 minutes. R. Exh. 51.

b. *Factual and legal conclusions*

Despite Safrit's denial that her statement to Boone on September 17 was disciplinary in nature, Gulledge utilized it to justify the written warning on September 18. I conclude that Safrit's statement constituted discipline. *General Electric Co.*, 255 NLRB 673, 682 (1981).

The Company's testimony establishes that it was not company policy to monitor all employee breaks. I credit Boone's testimony that Gulledge told her that Gulledge ''just happened'' to notice when Boone entered and left the smoker. But Gulledge also noticed the asserted times when other employees entered the smoker, as she plainly testified. She was watching, about 25 feet away. Gulledge's flat denial that she watched to see whether other employees overextended their break periods constitutes evidence that she selectively applied the break rule to Boone. It did not ''just happen.'' This selective application of the rule to a known Union activist is sufficient to establish its discriminatory motivation under established Board law. In addition, the picayune nature of the infraction—''17'' or ''18'' minutes, instead of ''15'' minutes absence—constitutes additional evidence. Although there is other evidence that Respondent did not strictly enforce its 15-minute rule, I need not rely upon this evidence in finding that Gulledge's warning constituted a violation of Section 8(a)(3) and (1) of the Act.

The same reasoning applies to Safrit's warning the day before. She told Boone that she would have to monitor her breaks after Boone's absence to get supplies from her regular work area. Safrit's statement was a change in the Company's established policy not to monitor break periods.

I conclude that the General Counsel has established a prima facie case. Based on Respondent's objections to Boone's union activities and wearing of union insignia, it is obvious that it had knowledge of same. Respondent has not justified either the September 17 or 18 warning. Accordingly, by such actions, it violated Section 8(a)(3) and (1) of the Act.

I also conclude that the warnings constituted an unlawful restriction of Boone to her work area while simultaneously allowing other employees to leave such areas, in violation of Section 8(a)(1) of the Act.[243]

10. The suspension and discharge of Elboyd Deal

a. *The suspension*

(1) Summary of the evidence

Elboyd Deal had been an employee of the Company for over 30 years. He had no writeups and at one time was a supervisor. Deal was a production clerk at the time of the events being litigated in this proceeding, and his supervisor was James O'Kelly. The two had a long history of eating together and engaging in discussions about controversial subjects, on which they took opposite sides. On October 4, 1990, O'Kelly wrote Deal a letter of praise for the ''extra effort'' Deal had exerted in helping get out a 1990 record amount of merchandise.[244] In December 1990, O'Kelly

[243] Decision on this allegation was previously reserved sec. II,V,4.

[244] C.P. Exh. 2.

wrote Deal a letter of ''commendation'' for the ''fine job'' he was doing.[245]

As described above, Deal made a ''passionate speech'' in favor of the Union during a campaign in 1985. I have found above that, on April 29, O'Kelly unlawfully threatened Deal with discharge if he continued to associate with a known union supporter.[246]

The suspension of Deal is based on events which took place on May 1. Deal, Supervisor O'Kelly, and employee William Hunter were sitting in the canteen, which is U-shaped, with their backs to the door. As was customary, Deal and O'Kelly were engaged in a hearted discussion, which included the prior owner's alleged absconding with the employees' retirement fund.

Mary Sherwood, a filing clerk, testified that she entered the canteen for about 2 minutes to heat her lunch. Sherwood averred that Deal was talking loudly, and using profanity ''that seems to be popular today. . . . God damn fucking.'' Sherwood asserted that Deal saw her, and became even louder, while waving his arms. However, on cross-examination, Sherwood agreed that Deal, O'Kelly, and Hunter were facing away from the door. The canteen was about 30-feet long and 15-feet wide. Sherwood did not hear or could not remember what Deal and O'Kelly were discussing. She only heard the profanity described above. Sherwood agreed that she had heard other employees curse in the plant. Plant Manager Bob White testified that two female employees complained that Supervisor O'Kelly cursed them. O'Kelly was not disciplined. O'Kelly testified that Deal saw Sherwood, that he then attempted to get Deal to calm down, and that Deal then lowered his voice. O'Kelly first denied that Deal engaged in ''normal'' cursing, but, upon being shown a transcript of his testimony at an unemployment compensation hearing, agreed that Deal's profanity was ''normal.''

According to Respondent's witness William Hunter, Deal was ''cursing a little . . . GD words.'' Sherwood came into the canteen, and O'Kelly ''told us to quiet down a little bit.'' Deal ''turned around and smiled and quieted down until she left.'' Hunter later reported these observations to company investigators. Deal denied that he saw Sherwood or that O'Kelly attempted to calm him down. He contended that other employees told him that Sherwood had ''set him up.''

Immediately after this incident, Sherwood complained to Supervisor Jerry Cobb and said that something should be done about it. Cobb agreed.

Deal and O'Kelly returned to the work floor. According to Deal, O'Kelly wanted to continue the argument. Deal testified that he became ill because of something he ate, and asked permission to go home. O'Kelly contended that Deal engaged in a 3- to 5-minute tirade about the pension fund and ''Republicans,'' waving his arms and using profanity. He then asked to go home. Deal denied engaging in a tirade. O'Kelly finally allowed him to go home.

After the canteen incident, Hunter went to a smoker adjacent to the desks of O'Kelly and Deal. He overheard Deal, O'Kelly, and other employees ''talking'' about the subjects discussed in the canteen.

Later that evening, Hunter was called to Supervisor Jerry Cobb's office. He told Cobb that Deal had quieted down and smiled at Sherwood. However, Cobb had already prepared a statement for Hunter saying that Deal had used so many profanities in the canteen that Hunter could not remember them. Hunter testified that the statement did not include his comment to Cobb that Deal had quieted down in the canteen. According to Hunter, ''some of the things he [Cobb] put in there is what I guess he just put in there.'' Nonetheless, Hunter signed the statement.[247]

Cobb obtained statements from other employees, and forwarded them to his superior, Kenny Brandon, with a recommendation that Deal be terminated.[248] The reason for the recommendation, Cobb asserted, was that the incident was ''intense,'' the ''vulgarity was unbelievable,'' and Deal was ''waving his hands.''

Cobb's supervisors reported back to him that they had decided on a 5-day suspension rather than termination, because of the absence of any writeups on Deal's record, and his 31 years of employment. Cobb justified this action on the ground that two other employees had been suspended for 5 days.[249]

Deal returned to work after a few days illness and was called into Cobb's office. The supervisor told Deal that he was going to give him a 5-day suspension for using ''obscene profanity.'' Cobb said that employees overheard Deal using ''foul language,'' ''shit'' and ''damn.'' Deal replied that he had never heard of such discipline, and asked whether the could face his ''accusers.'' Cobb replied that the matter was still ''under investigation.'' Deal then asked to speak to Personnel Manager Nancy Yates or Plant Manager Bob White, without success. He next asked Cobb whether he could make a statement, but the supervisor refused. Cobb issued a 5-day suspension to Deal for engaging in ''offensive and profane'' language in the canteen and on the plant floor.[250]

(2) Factual and legal conclusion

There is no credible evidence that Deal engaged in anything other than profanity which was customary in the mill. Sherwood admitted that profanity was common, and O'Kelly admitted that Deal's profanity was ''normal'' O'Kelly himself cursed two female employees, but was not disciplined.

I do not credit O'Kelly's testimony about the ''tirade'' on the floor. Deal denied this, and testified that O'Kelly wanted to continue the argument which had started in the canteen. Hunter, who was nearby in a smoker, only overheard several employees ''talking'' about the subjects under discussion in the canteen.

Deal may have been vociferous in his opposition to O'Kelly's views—but he had done this for years without a writeup, and the suspension notice only alleges ''offensive and profane'' language.

Cobb's ''investigation'' of the incident is replete with evidence of discriminatory motivation. It is established Board law that failure to conduct an objective investigation of al-

[245] C.P. Exh. 1.

[246] Supra, sec. II,G.

[247] R. Exh. 99.

[248] These statements were received for the purpose of showing Respondent's course of action, but not to establish the truth of their contents.

[249] The two suspensions merely stated that ''disorderly conduct'' was the offense. R. Exhs. 117, 118. Cobb asserted that one of them involved a ''slapping'' incident.

[250] R. Exh. 119.

leged misconduct is itself evidence of discriminatory motivation. Cobb did more than fail to conduct such an investigation. He prepared a statement for Hunter before interviewing the latter, and inserted into the statement allegations Hunter never made, while omitting statements that he later did make. Not only did Cobb fail to ask Deal for his account of the events, but he refused to allow Deal to present his version.

Although the union campaign had not started at the date of the suspension, Deal's support of the Union in a prior campaign, and O'Kelly's threat of discharge if Deal continued to associate with a known union supporter, establish a prima facie case that Deal's union sympathies were a motivating factor in Respondent's decision to suspend him. The reasons advanced by Respondent for the discipline are pretextual, based on the facts shown above. Accordingly, I find that, by suspending Deal for 5 days on May 2 because of his union sympathies, Respondent thereby violated Section 8(a)(3) and (1) of the Act.

b. *Deal's discharge*

(1) Summary of the evidence

Between the time of Deal's suspension on May 2 and his discharge on August 21, Respondent, by its Supervisor James O'Kelly, committed numerous acts of interference with Deal's statutory rights as described above.[251] On about June 1, Deal started wearing a homemade union badge; and, after the beginning of the campaign on June 12, engaged in various activities on behalf of the Union.

After the suspension, Deal wrote a letter protesting it to Company Vice President T. Morgan Padgett. Thereafter, pursuant to instructions from his supervisors, O'Kelly submitted regular reports to them concerning Deal, about twice weekly. Deal met with Padgett in early June. The latter reviewed the suspension, and told Deal that he was going to let it stand. According to Padgett, Deal said that he had some Union lawyers working for him, and that he had $10,000 to spend on his case. Deal denied making this statement.

Padgett also testified that Deal said he had four brothers who had a ''nervous condition,'' and that it looked as if Deal was going to have one too ''from everything that was going on in his life.'' Deal testified that he told Plant Manager White that he had ''a nerve problem for years,'' and that it ''ran in the family.''

Deal's discharge was predicated on a statement he is alleged to have made in the canteen on August 20. This was the first day of the election, and Deal was an observer for the Union. There were about 10 employees in the canteen, according to O'Kelly. Deal contended there were 18 to 21. O'Kelly was eating with William Hunter and Steve Jones. When Deal entered the room, it became quiet. According to the testimony of all the witnesses, Deal asked the usual union question: ''What time is it?'' He received the usual response, ''It's Union time.'' O'Kelly replied that it was ''6:40,'' and caused some laughter.

O'Kelly testified that Deal then said: ''I've got plans for Kenny too. Don't you think that Kenny would look good in a wheelchair?'' After that remark, O'Kelly invited Deal to eat with them, but Deal declined, saying he had work to do. He purchased a drink and left.

O'Kelly continued eating with the other employees, and said nothing about Deal's alleged remark. According to Hunter, O'Kelly did not appear to be upset and simply continued his meal without comment.

After leaving the canteen, O'Kelly contended, he wrote out a statement about the incident, and left it for Supervisor Jerry Cobb in a sealed envelope.

O'Kelly testified that he also asked other employees whether they heard what he, O'Kelly, claimed that Deal had said. O'Kelly first stated that he asked two or three employees, but then averred that he asked ''as many as he could,'' but ''ran out of time.'' Some of the employees told him that they did not hear what O'Kelly stated Deal had said. The next day, O'Kelly ended with signed statements from four employees,[252] two of whom testified at the hearing.[253]

O'Kelly testified that he did not prepare these statements on the night of Deal's alleged remark, but did so the following night. Supervisor Jerry Cobb, however, contended that O'Kelly did so on the evening of August 20. These were signed statements which the employees had changed and initialed, according to Cobb.

Superintendent Kenny Brandon contended that Jerry Cobb and Bob White told him about the ''threat'' late in the evening of August 20. He was ''stunned,'' but remained in the plant for an hour, and then went home. The next morning there were three or four typed, unsigned statements from employees on his desk. He discussed with department manager White whether Deal's alleged statement constituted disorderly conduct or a threat. Brandon then gave the unsigned statements to Jerry Cobb and James O'Kelly, and told them to complete the investigation.

Department Manager Bob White first testified that O'Kelly gave *him* a sealed envelope with a report on the evening of August 20. He then met O'Kelly in the plant, and the latter told him about Deal's asserted threat. White consulted his superiors, who were present because of the election, and told O'Kelly to get the statements signed.

On cross-examination, White gave a different timetable. He agreed that he testified about these events at an unemployment compensation hearing in October 1991, about 2 months after Deal's discharge. White admitted that he then testified that he heard about the alleged threat on the second day of the election, i.e., August 21, at 2:40 p.m. At the unfair labor practice hearing, White contended that he had been mistaken about both the date and the time during his prior testimony.

Despite the asserted flurry of supervisory activity on August 20, nothing unusual happened. Deal asked O'Kelly for permission to leave during the shift and act as an observer for the Union at the election. O'Kelly granted this request, and Deal left the plant at the end of the shift without anything being said to him about his asserted threat to Kenny Brandon.

The next day, White met with Brandon and Personnel Officer Nancy Yates and discussed whether Deal's alleged statement constituted ''disorderly conduct,'' which was pun-

[251] Supra, secs. II,A,3, E, F, Q, T, and RR.

[252] William Hunter, Martin Hernandez, Steve Jones, and Jamie Twitty.

[253] William Hunter and Martin Hernandez.

ishable with 1-1/2 ''points'' under Respondent's disciplinary system, or a threat to a supervisor, which would warrant immediate discharge. In either event, immediate discharge was warranted, based on the 1-1/2 points Deal had acquired because of the suspension.

White stated that he then called Vice President T. Morgan Padgett, and advised him of their intention to suspend Deal ''when he arrived that afternoon,'' pending discharge if there were signed supporting employee statements. White also called security.

Deal reported for work at 3 p.m. O'Kelly took him to Brandon's office. The route that they took was circuitous—down the stairwell of the new warehouse, and past the canteen and numerous employees during a change of shift. Deal testified that he was being ''paraded,'' and would not have been seen by as many employees if a direct route had been followed. Plant Manager Bob White and ''Cayado'' were in Brandon's office (Brandon was not present). Cayado worked for the Wackenhut Security organization. O'Kelly told Deal that he was being suspended for threatening a supervisor. When Deal protested that he had not threatened O'Kelly, the latter responded that Deal had threatened Brandon by saying that he would look good in a wheelchair. ''I ain't believing this,'' Deal responded. O'Kelly asked Deal to sign a statement, and Deal refused, saying that he would sign a ''false document.'' White did not ask Deal what had happened, but instructed him to call Brandon the next day. At the hearing, Deal denied making the statement attributed to him.

O'Kelly testified that the Company did not normally call the chief of security when suspending an employee pending discharge. Nonetheless, Cayado took Deal to a ''bigger car than he had ever seen.'' Another security individual (the second in command) was sitting in the back. Deal was told that the car had entered through gate 15, which was nearby. However, the security people took Deal around various buildings by a winding route to gate 17, through which Deal had entered the plant.

Later, on August 21, O'Kelly asked Hunter to sign a statement which O'Kelly had prepared. The statement reported that Deal said: ''I got plans for Kenny Brandon. Kenny would look good in a wheelchair, too.'' Hunter denied the first sentence, about ''plans.'' This was crossed out, and Hunter signed the statement. He testified that this was all that Deal said. However, in his pretrial affidavit, Hunter stated that Deal said, ''It's Union time.'' Hunter contended that Deal said, ''Kenny would look good in a wheelchair, too,'' but admitted that his pretrial affidavit did not contain the word ''too.'' According to Hunter, Deal did not explain what his statement meant. Hunter agreed that he himself did not support the Union.

Martin Hernandez signed the statement prepared for him by O'Kelly,[254] but gave different versions in his testimony. He was uncertain whether Deal said ''Kenny'' or ''Kenny Brandon.'' Hernandez opposed the Union.

Brandon stated that White told him to receive Deal's call the next day, and tell him that he was discharged. Brandon testified that he had previously had some ''discussions'' with Deal, but no ''major'' confrontation. He was not ''worried,'' Brandon testified. When Deal called the next day, Brandon told him that he was discharged. He did not ask Deal whether the latter had said that Brandon would look good in a wheelchair.

(2) Factual and legal conclusions

The welter of contradictions in Respondent's evidence precludes a finding that any supervisor other than O'Kelly did anything about the ''threat'' on the evening of August 20. O'Kelly admitted that he did not prepare any typed statements until August 21, but Cobb contended that O'Kelly did so on August 20. White gave two versions. One, at the unemployment compensation hearing stated that he did not learn of the ''threat'' until 2:40 p.m. on August 21, which was 20 minutes before Deal's scheduled arrival for work. On the other hand, White also averred that he was discussing appropriate discipline with other supervisors before Deal's arrival. This discussion—apparently detailed in nature—had only 20 minutes to run, since Deal was taken to Brandon's office immediately upon his arrival at 3 p.m.

Brandon said that he was ''stunned'' to learn about the threat on August 20. Nonetheless, he did not seek protection, and remained in the plant. In other testimony, Brandon agreed that he was not ''worried.'' He had no major confrontations with Deal, and, in fact, never asked him whether he made the alleged threat. Nobody, neither White who conducted the interview on August 21, nor Brandon who discharged him the next day, actually asked Deal what took place.

Respondent's evidence thus comes down to the testimony of O'Kelly, Hunter, and Hernandez. O'Kelly presented Hunter with a typed statement, and Hunter disagreed that Deal said he had ''plans'' for Brandon. Deal only said that ''Kenny would look good in a wheelchair, too,'' without explanation. Hunter had to be reminded that his pretrial affidavit had a garbled version of Deal's standard opening line, ''What time is it?'' Although Hernandez signed the typed statement and gave similar although not identical testimony, he opposed the Union, as did Hunter. I consider Hunter and Hernandez to have been biased witnesses.

I credit Deal's testimony that there were about 20 employees in the canteen when Deal entered it on the first day of the election. The room became quiet when Deal entered, and asked the union question. After the alleged threat, O'Kelly invited Deal to eat with him and the other employees. He said nothing about the asserted threat. Later, O'Kelly spoke to as many employees as he could, and some told him that they did not hear what O'Kelly claimed was said.

These statements to O'Kelly constitute what have been called ''negative assertions,'' or ''negative knowledge.'' Wigmore states that ''there is no inherent weakness in this kind of knowledge. It may even sometimes be stronger than affirmative impressions. The only requirement is that the witness should have been so situated that *in the ordinary course of events he would have heard* or seen the fact had it occurred. This sort of testimony is constantly received.'' (Emphasis in original.)[255]

It was quiet in the canteen when Deal spoke, and there were about 20 employees present. In the ordinary course of events, they would have heard the alleged threat. The fact that some of them told O'Kelly that they did not hear it con-

[254] R. Exh. 95.

[255] 2 Wigmore, *Evidence* § 664 (Chadbourn rev. 1979). Accord: Jones on *Evidence* § 4:1 (1972).

stitutes evidence that in fact it was not made. It is significant that out of 20 persons in a position to hear Deal, Respondent has come up with only two witnesses to corroborate O'Kelly—and the corroboration is only partial as to one of them.

Another factor is the improbability of such a statement. If Deal made the statement, why did O'Kelly invite Deal to eat with him and the other two employees? After Deal declined, why did O'Kelly go through the meal without asking Hunter or Jones whether they heard the remark? And, if Deal had threatened a supervisor, why was he allowed to go back to work without a word being said, or precautions being taken? All that happened is that O'Kelly scurried around on the evening of August 20 trying to get employees to agree to sign statements.

Based on Deal's denial, the bias of Respondent's witnesses, the assertions of other employees in the canteen that they did not hear any such remark, and the improbabilities of the statement alleged by O'Kelly, I conclude that Deal did not make the statement attributed to him.

Even if made—in either version alleged by the Respondent's witnesses—the statement did not constitute a threat of immediate harm to anyone. The statement, ''Kenny would look in a wheelchair'' is ambiguous. Add the word ''too'' and it is more so. Respondent's evidence is contradictory on whether Deal said he had ''plans'' for Brandon. The alleged statement did not threaten immediate harm to anyone.[256] Certainly none was perceived by Brandon.

I conclude that Respondent fabricated this charge against Deal because of its animus against the Union, Deal's union activities, and the fact he submitted an affidavit to the Board.

Although the Company in effect charged Deal with mental instability, this was not alleged as a reason for the discharge, and there is no adequate evidence of its validity. The Company's manufactured evidence is belied by Deal's 30 years of employment, part of it as a supervisor, without a single writeup, and by the fact that he was twice given letters of commendation less than a year before his discharge.

Deal was perceived by the Company as the ringleader of the union movement. In his reporting for work on the second day of the election, he was ''paraded'' past employees by a circuitous route to Brandon's office, discharged for a pretextual reason, and taken out of the plant by the chief of security in a very large automobile, again by a circuitous route.

Deal's union sympathies were known to Respondent, and its many acts of interference with his statutory rights are detailed above. I find that, by discharging Deal, Respondent violated Section 8(a)(3) and (1) of the Act. Since its action was also based in part on the fact that Deal submitted an affidavit to the Board, the Company also violated Section 8(a)(4) of the Act.

11. The suspension and discharge of Wayne Linton

a. *The facts*

Linton was a 17-year employee of the Company, and was terminated at about the time of the election. He became an active supporter of the Union when the campaign started, and took the union constitution and a contract to work for other employees to read. Linton's supervisor was Ted Godfrey.[257] Linton worked in the towel bleachery department, where towels were stretched and bleached. He worked as a ''tenter'' on the second floor.

Linton attended several company meetings, at which he voiced complaints, including an exchange with Plant Manager Charles Shuping. Toward the end of July, Godfrey told the employees to shut the machines down for another meeting. Godfrey further told Linton that he was not to attend. Linton went up to the third floor and talked with a friend of his, who was ''doffing.'' Godfrey was sitting at his desk a few feet away, and said nothing. Linton testified without contradiction that employees were allowed to move about and talk to other employees in the department when their machines were shut down for any reason.

A few days later, a meeting was held for employees who had been barred from the last meeting. Linton asked Shuping several times why he had been prevented from attending the prior meeting with his fellow employees, but received no answer.

Linton was allowed to attend the next meeting, a few days later, but got into another exchange with Shuping on the issue of whether the Company would lose orders if it became unionized.

The next meeting was held on August 13, and the machines were shut down. Linton, however, was not allowed to attend this meeting. He took some union literature to another employee who was working, gave it to him, and talked for a few minutes. Godfrey told him to return to his work area. Later, Godfrey and Personnel Manager Scott Human came to Linton's work station and told him that he was suspended for violating ''rule 10.''[258] As Godfrey escorted Linton to the gate, he said: ''That's what happens to Union pushers like you.''

The next day, August 14, Shuping's assistant, Bud Cook, called Linton and told him not to come to work, because an investigation was underway. Linton called Godfrey to inform of this. Godfrey replied: ''Well, you picked the road you wanted to walk down; now you have to pay the consequences for your actions.''

On August 15, Linton went to pick up his check, but was not allowed to enter the plant. The check was brought to him by Supervisor Harold Grant. Linton asked what was going on, but Grant just smiled.

On August 20, the first day of the election, Linton arrived at the plant to vote, but was not allowed to enter without an ''escort'' of company officials. They took him to the polling area, where he was told that he had been terminated. Linton voted under challenge.

Linton was never shown any document giving the reason for his discharge. The notice of termination states that he was observed outside his work area distributing printed material to fellow employees in violation of rule 10. The remarks section states that Linton complained about his workload,

[256] *Anaconda Insulation Co.*, 298 NLRB 1105, 1113 (1990). See also *Leasco, Inc.*, 289 NLRB 549, 553 (1988)

[257] I have previously found that Godfrey unlawfully interrogated Linton, and threatened him with more stringent enforcement of work rules. Supra, secs. II,A,4 and K.

[258] As previously described, rule 10 prohibits distribution of literature, pamphlets, or printed material of any kind in work areas at any time. G.C. Exh. 23.

tried to influence other employees on this subject, and was ''very negative about the Company.''[259]

I have previously found that Respondent violated Section 8(a)(1) of the Act by prohibiting employees from having prounion literature in their possession while permitting procompany literature, and by allowing employees to distribute campaign literature on company time while not allowed prounion employees to do the same.[260] In addition, the Company permitted employees to engage in many activities on the work floor. This included the sale of printed material, such as race tickets and raffle tickets.[261]

b. *Legal conclusion*

There is no doubt about the facts, which are uncontradicted. Respondent argues that all the instances supporting the General Counsel's argument involve ''solicitation'' rather than ''distribution,'' and that there is nothing unlawful about rule 10.[262]

Linton engaged in union activities and the Company knew it. Godfrey called him a ''union pusher.'' I conclude that the asserted reason for Linton's discharge involved disparate application of the Company's no-distribution rule. I further conclude that this reason was pretextual, and that the real reason was Linton's union activities. This conclusion is buttressed by the term, union pusher, applied by Godfrey to Linton, and by his telling Linton that he had to pay the consequences for his action. I find that Respondent violated Section 8(a)(3) and (1) of the Act by discharging Linton.

Respondent argues that the day of discharge was August 19, rather than August 13, the day of the suspension.[263] This argument is apparently based on an entry on Linton's employment record reading: ''8–19–91 L.D.W. 8–1–91. Term. Code 31 . . . .''[264] The notice of termination bears a signature date of August 19, and states that the last day worked was August 13. The space for the ''date notice given'' is blank.[265] None of the signatories of the notice testified.

This dispute is irrelevant. The complaint alleges and I find that Linton was unlawfully suspended on August 13. He was not returned to work, and, accordingly, his backpay begins on that date.

12. The alleged assignment of more onerous work to Eldridge Henry

a. *Summary of the evidence*

Eldridge Henry started working for the Company in early 1989, as a trimmer. Some time later, in mid- or late 1990, he was transferred to a new job, which he defined as ''production distribution/recorder,'' in the towel sewing department. His supervisor was Rod Purser.

According to Henry, Purser told him at the time of the new assignment that his job duties were to take bad hems to section 4 to be repaired, to keep the aisles clear, and to dump garbage from the trimmer cans into the garbage.

Purser testified that he told Henry he had to deliver bad hems to the hem repairers, and ''lay up extras to the inspectors'' if a machine was down. He did not instruct Henry to dump garbage.

Henry became involved in the union campaign a few weeks after it began, distributed literature, and wore union buttons every day. Purser knew that Henry was a union supporter. I have found above that Purser unlawfully threatened Henry with stricter enforcement of company rules if the Union came in, and with discharge.[266]

On about August 1, according to Henry, Purser assigned new duties to him. The first was the requirement to push full trucks of towels up to the machines. There were several hundred pounds of towels on these trucks. Prior to this new duty, tow motor operators (dinky drivers) pushed full trucks up to the machines, and Henry pushed the empty trucks back to the aisle. Henry was also given a ''little green card,'' and told to record on it the number of hems repaired by the hem repairers. Further, Purser told Henry to that he would be required to ''lay up'' towels for the inspectors. Contradicting Purser, Henry denied that he was required to perform this latter work before the assignment of new duties.

During this conversation, Purser showed Henry a written list of functions, and told him that this was what the job required. Henry asked why Purser had not told him this when he was transferred into the new job, and Purser replied that he had just found out that the employees in similar jobs on other shifts were performing these functions.

Purser testified that he had a conversation with Henry about his duties sometime in ''April or May,'' although Purser was not sure. The job title was ''production distributor recorder.'' As indicated, Purser insisted that Henry had previously been required to lay up towels for the inspectors, contrary to Henry. He also contended that it had been Henry's job to record bad hem repairs. With respect to pushing loaded trucks back to the machines, Purser said that sometimes the tow motor operators did it, and that Henry did it on other occasions.

Purser contended that Henry's job was not being accomplished. Accordingly, he asked a supervisor on another shift, Don Ross, to give him a list of duties for an employee on Ross' shift.

Ross acknowledged that Purser asked him for the list. He stated that the functions about which Purser was asking were performed by a ''spare hand.'' ''It's not a job,'' Ross contended. He discussed Purser's request with Billy Huffman, a third-shift supervisor, and Huffman came up with nine functions of this ''spare hand'' job. Ross added six more. An additional function was added to the list, by Purser according to Ross, to make a total of 16 functions.[267]

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[259] G.C. Exh. 50.

[260] Supra, secs. II,DD and FF.

[261] Other activities were football pools, and sales of a variety of food products (hot dogs, hamburgers, candy), homemade crafts, Tupperware, Avon products, etc.

[262] R. Br. 409.

[263] R. Br. 405.

[264] G.C. Exh. 50.

[265] G.C. Exh. 59.

[266] Supra, secs. II,D,2 and P,2.

[267] The full list of functions for a job described as ''service operator'': (1) supplying machine operators with full trucks; (2) supplying repairers with towels to be reworked; (3) transporting unhemmed towels to manual repairers; (4) weighing ''extras'' and distributing them to inspectors (start up); (5) weighing and recording extras at end of shift; (6) adding extras to timecard, start-up and during shift; (7) subtracting extras from timecards, during and at end of shift; (8) retrieving towels from third floor; (9) counting and transporting them to ''section H''; (10) pulling empty trucks to staging area; (11) pull-

Purser agreed that he showed this list to Henry for the first time after getting it from Ross. He also admitted that he knew that all these functions were part of the job at the time Henry was transferred into the new job. Purser agreed that he could have made up this list himself, and could have presented it to Henry. However, he just pointed out things for Henry to do ''as they came up.'' The reason for the list was that Purser wanted to be sure that similarly situated employees on different shifts were performing the same duties. Asked on cross-examination whether he told Henry that the latter had to perform these new duties, Purser denied it. Instead, he informed Henry of ''the duties of the job'' and ''asked him to perform them.''

b. *Factual and legal conclusions*

Although there is minor disagreement between Henry and Purser as to the latter's description of the job duties when Henry was transferred into the new job, it is obvious, as Purser admitted, that only a few duties were described. Although Purser contended that there were many more which he knew at the time, he admitted that he did not inform Henry of them. I accept Henry's testimony that he performed only the duties he described.

I credit Herny's testimony that the new duties were assigned about August 1. Purser himself was ''not sure.''

Purser's reason for his investigation into the duties of the job at this time is not fully explained. He said that Henry was not performing his duties. This begs the question as to what they were. The rest of Purser's ''investigation'' is replete with incredible data. In the first place, Respondent's witnesses could not agree on the title of the job. Purser called it ''production distributor recorder,'' the list of functions describes it as service operator, while Supervisor Ross said that it was not even a job. Supervisor Huffman's opinion of the nature of the job he was supposedly describing is not in the record, and his description is hearsay. There is thus insufficient evidence to justify a finding that these two supervisors were even describing the same job that Henry had. And the job duties they came up with are so numerous that no one employee could be expected to perform them. Yet, Purser admitted, this is what he told Henry to do.

I conclude that Purser's assignment of the new duties to Henry was based on its antiunion animus in general, and on Henry's participation in the union campaign. As such, the assignment violated Section 8(a)(3) and (1) of the Act.

13. The alleged removal of Robin Teal from a temporary supervisory assignment

a. *Summary of the evidence*

I have found that Respondent unlawfully told Teal that she and another employee would be removed from temporary supervisory assignments because of their support of the Union.[268]

Plant Manager Jimmy Baker testified that the other employee (Delma Stanford) came to him before the election, said that Stanford had made a mistake, and wanted to make amends. About 8 weeks after the election, according to Baker, Stanford was returned to temporary supervisory assignments.

Thereafter, according to Baker, Teal asked him why she had not been returned to temporary assignments along with Stanford. Baker testified that he responded by telling Teal about Stanford's decision to support the Company after the election. Baker added that the Company considered Teal's ''character,'' and the asserted fact that the hourly employees did not accept her on the same level of authority as they did Stanford. On cross-examination, Baker admitted that the reason Teal had not been returned to supervisory duty was the fact that she had not ''demonstrated the change'' that Stanford had shown.

b. *Factual and legal conclusions*

Baker's comments about Teal's ''character'' and asserted lack of ''authority'' are specious. Respondent continued to use Teal as a temporary supervisor until she began supporting the Union. Baker admitted that she was not returned to temporary supervisory duty because she had not ''made the change'' that Stanford had expressed, i.e., had not recanted her support of the Union.

On the basis of the authority cited above.[269] I conclude that Respondent removed Teal from temporary supervisory assignments on August 22, and has not since then returned her to such assignments, because of her support of the Union. This violated Section 8(a)(3) and (1) of the Act.

14. The discharge of Sylvia Walter

a. *Summary of the evidence*

Sylvia Walter was hired on May 9 as a service operator under the supervision of Mike Bumgarner. She was discharged 90 days after being hired. Her short employment history is a mixture of her asking to quit for various reasons, Respondent's persuading her not to do so, conversations about the Union, and various absences upon which Respondent relies as the justification for discharging her.

In late May, Walter was involved in the elevator accident of which there is other evidence in the record. The elevator fell about one floor. Walter was frightened, and informed the office the next day that she was quitting. Department Manager Tim Adams offered her an ''auto-core'' job, still under the supervision of Mike Bumgarner.

On May 22, Walter was absent because, she said, of a strep throat. She was absent again the next day, May 23, and on June 6. Bumgarner testified with Walter's service record in front of him.[270] This document, which Bumgarner maintained, is difficult to understand, and much of his testimony appeared to involve speculation as to the date of asserted absences. He contended that Walter was absent again on June 16 and 24. Walter had no recollection of these absences.

The next absence on which Walter and Bumgarner agree was July 13. Walter testified without contradiction that she ''asked off'' for this day a week in advance. Walter agreed that she received a verbal warning for being tardy for one hour on July 16. This is the only discipline in her record.

ing trucks of returned towels to staging area; (12) tagging towels in drying room; (13) tying up towels from drying room and restacking those that had fallen over; (14) checking up on operators at end of day; (15) taking extras to manual hemmer inspectors. R. Exh. 52.

[268] Supra, sec. II,II.

[269] Id.

[270] R. Exh. 66.

Bumgarner contended that he did not know of Walter's ''absentee problems'' because he was a ''new supervisor.'' On the other hand, he also testified that he maintained Walter's service record which recorded her absences, and that, if Walter had a problem with absenteeism, he would have given her a warning.

Soon after accepting the auto-core job, Walter was ''bumped'' to a position as spare hand. Thereafter, in July, she was ''bumped'' again to the position of reader. She did not know the name of the employee that took her place, but complained to Bumgarner that the Company was trying to make ''some people happy because the Union was coming in.'' Bumgarner denied that this was true. He testified that Walter again threatened to quit, and that he and another supervisor talked her out of it. He told Walter to go home to bed, come back the next evening, and that everything would be all right. Walter did so, and, upon her return, was offered another reader's job, which she rejected, and then another auto-core job on a different shift, beginning August 7. She accepted.

After being hired, Walter became involved in the union campaign. She talked to other employees in the smoker, distributed leaflets, and made house call. Management trainee Myers testified that Walter was one of the employees seen passing out fliers and buttons at the gate. Walter had a conversation with Bumgarner about bargaining.[271] As detailed above, she attended a company meeting on August 1, at which she asked Plant Manager M. D. Ford why some employees were denied access to meetings. He replied that there was little possibility of changing the minds of union pushers. As further described above, Department Manager Adams and Management Trainee Myers approached Walter after this meeting and asked whether all her questions had been answered. She replied ''No,'' and said that Ford had been ''smart'' with her. Another discussion of bargaining took place.[272]

As indicated, Walter was transferal to a different shift on August 7. The supervisor was David Cannon. Walter worked there one night. The following morning, Cannon brought her time sheet to Department Manager Adams, and said that Walter had an attendance problem. He asked whether he could discharge Walter on her last day as a probationary employee. Adams consulted with personnel director Drumm, who said that such a discharge would be acceptable.

Cannon testified about the Company's absenteeism policy. He agreed that there were exceptions, e.g., an absence which was ''asked off'' and granted does not count in determining whether an employee had exceeded the allowable percentage of absences. However, this policy does not apply to probationary employees. According to Cannon, the supervisor has discretion in determining allowable absenteeism of these employees. If a probationary employee's absences are scattered throughout the 90-day period, Cannon would inquire as to the reason. His ''rule of thumb,'' Cannon stated, was that an employee out of 4 to 5 days for any reason whatever was ''close to the borderline.'' Cannon also agreed that job performance and attitude are factors to be considered.

After getting Adams' permission, Cannon decided to terminate Walter based solely on an examination of her timesheet. He did not talk to Walter nor consult Bumgarner, who had maintained the record and had supervised Walter. Thereafter, Respondent contends, Adams criticized Bumgarner for allowing Walter to be absent without taking some action. Adams claimed that he knew nothing of the absences.

Cannon argued that he had fired other probationary employees because of absenteeism. However, their notices of termination show that they were discharged from about a week to 2 weeks after the last day that they worked.[273] Walter, on the other hand, was discharged the day following her last day of work.[274] In fact, she arrived for work on August 8, and was then notified that she was discharged.

b. *Factual and legal conclusions*

Respondent argues that it had no knowledge of Walter's support of the Union.[275] However, management trainee, Myers, testified that she was one of the employees passing out union material at the gate. This is sufficient to establish Respondent's knowledge of those activities. Walter's union sympathies were more fully disclosed by her exchange with Plant Manager Ford on August 1, in which he commented about union pushers, and by her subsequent discussions with Department Manager Adams and management trainee, Myers, in which she said that not all of her questions had been answered, and that Ford had been ''smart'' with her.

The objective facts show that Walter's only discipline during her employment was a verbal warning for one hour's tardiness. She asked to quit on two occasions. The second incident occurred in July after she was bumped to a job as reader. From the fact that she was then transferred to another job beginning August 7, I infer that this took place in late July—subsequent to her absences and verbal warning for tardiness on July 16. Again, for the second time, Respondent persuaded her not to quit, and offered her the auto-core job on another shift.

The discussions with Ford, Adams, and Myers took place after the transfer decision. Walter was then fired by her new supervisor, David Cannon, based solely on her timesheet. He did not consult Bumgarner, who had supervised her for over 2 months, nor did he follow his own formula of considering work performance and attitude.

Bumgarner's and Adams' statements that they knew nothing about Walter's absences are either unbelievable, or the absences were not significant. Bumgarner flatly contradicted himself on this subject, and I do not credit Adams' professed ignorance of Walter's qualifications before allowing her to transfer to a different job and another shift. Adams' asserted criticism of Bumgarner was simply a charade, if it happened at all.

Cannon's reliance on other discharges as evidence of Respondent's policy proves nothing. These other probationary employees had not worked for appreciable periods of time before the dates of their discharges. I conclude that Respondent simply decided that they had quit. Walter did not quit, and was still working.

The timing of the last events provides additional evidence of discriminatory motivation. In late July, after bumping Walter a second time, the Company persuaded her not to

[271] Supra, sec. II,C,1.
[272] Supra, sec. II,Y.
[273] R. Exhs. 68–72.
[274] R. Exh. 67.
[275] R. Br. 423–427.

quit, also for a second time, and offered her a new job of her choice. On August 1, she had an open confrontation with the plant manager, and a later discussion with two supervisors. Thereafter, without more, she was discharged.

I conclude that Respondent's asserted reasons are pretextual, and that Walter was discharged because of her union sympathies and activities, in violation of Section 8(a)(3) and (1) of the Act.

15. The discharge of Reginald Turner

a. *Summary of the evidence*

Respondent discharged Reginald Turner on August 19, allegedly because he was ''voluntarily absent'' on August 17, and had violated the attendance rules twice before within the preceding 6 months.[276]

The first offense was for ''voluntary absence'' on March 4.[277] Turner had previously committed the same infraction on January 8, for which he was given a verbal warning.[278] Under Respondent's published rules, a second offense within 3 months results in disciplinary action.[279]

Turner received a verbal warning for being tardy on March 18.[280] The records show that he was tardy again on March 22, and received a 1-day suspension.[281] On the same date, March 22, Superintendent Jerry Luck sent Turner a letter warning him that further violation of ''any plant rule'' could result in suspension pending discharge.[282]

About a month later, on April 25, Turner received a verbal warning for ''inefficiency'' and violation of rule 19. Both ''irregular attendance'' (rule 18), and ''inefficiency'' (rule 19) fall within Respondent's ''group D'' of violations. Under its written policy, a second group D violation within 6 months results in suspension without pay, and a third violation in discharge.[283] Turner had already violated a group D rule twice, and the ''inefficiency'' citation would have been his third within 6 months. Nonetheless, and despite Superintendent Luck's letter, he was neither suspended nor discharged for ''inefficiency'' in April.

I have found above that Turner became active in supporting the Union after the campaign began. I have also found that, about a week before the election, Turner told employee Walter Waller that he was wearing a company T-shirt to avoid harassment, that Supervisors Earwood and Blalock then asked him his intentions in the forthcoming election, and that Turner replied that he was going to vote for the Union.[284] Respondent fired him a few days later.

Respondent contends that Turner had a ''voluntary absence'' on August 17, and that this was his ''third point'' within 6 months.

Turner called in on August 16 to report that he had the flu. He asked for Supervisor Earwood, and then spoke to personnel clerk, Sylvia Pinyan. Turner testified that he told Pinyan that he had bronchitis and the flu, that he would be in the next day (Saturday) if he felt better, but, if not, the following Monday. Pinyan testified that Turner told her he had bronchitis, and ''may be in tomorrow.'' Pinyan also stated that she told Supervisor Earwood that she had advised Turner to call a supervisor if he was not coming in. A log which Pinyan initialed reads that Turner called at 3:30 p.m., ''Sick, bronchitis, may be in tomorrow.''[285]

Turner did not call in on August 17, returned to work on August 19, and was discharged because his ''voluntary absence'' on August 17 constituted his ''third point'' within 6 months.

There is conflicting evidence on an employee's obligation when calling in sick. Supervisor Earwood contended that the employee had to call in every day, but could make an arrangement with a supervisor to be absent for a longer period without calling. Turner testified that he had previously been out sick for several days, and had asked Supervisor Carol Ingram whether he had to call in every day. Ingram replied, according to Turner, that this was not necessary, and that a call every 2 to 3 days would be satisfactory. Ingram did not testify. Respondent's published rules on absenteeism are silent on this issue.[286]

b. *Factual and legal conclusions*

I credit Turner's uncontradicted testimony that Supervisor Ingram previously told him that he did not have to call in every day during an illness, but that a call every 2 or 3 days would be sufficient. In light of this finding, and the absence of any published rule on the subject, I conclude that Respondent's call-in rule during illness was ambiguous. Certainly, Turner had every right to rely on what a supervisor had told him. I further credit Turner's testimony, corroborated by Pinyan's note, that he told her he might be in the next day, but, if not, the following Monday.

It is established Board law that disparate application of an employer's rule may constitute evidence of discriminatory motivation. This includes not only disparate application to other employees, but also to a different application of the rule to the same employee. *Filene's Basement Store*, 299 NLRB 183, 184 (1990). The record shows that this is what happened in this case. The fact that Respondent chose to ignore Turner's violation of rule 19 in April, when he already had ''2 points,'' constitutes evidence that its utilization of rule 18 just before the election was discriminatorily motivated. The timing of Respondent's action—a few days after he had announced his intention to vote for the Union in the election starting the next day—constitutes additional evidence.

Respondent knew that Turner was a union supporter. I conclude that it discharged him on August 19 because of his union sympathies and activities, in violation of Section 8(a)(3) and (1) of the Act.

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[276] R. Exh. 12; G.C. Exh. 23.

[277] R. Exh. 7.

[278] R. Exh. 6. This warning was signed by Supervisor Carol Ingram.

[279] G.C. Exh. 24.

[280] R. Exh. 8. This warning was signed by Supervisor Carol Ingram.

[281] R. Exh. 9. This disciplinary form was also signed by Supervisor Ingram. It erroneously lists the prior warning for tardiness as having occurred on March 5, rather than March 18.

[282] R. Exh. 10.

[283] G.C. Exh. 23.

[284] Supra, sec. II,A,2.

[285] R. Exh. 36.

[286] G.C. Exh. 24.

16. The discharge of Charles Cordle

a. *Summary of the evidence*

Charles Cordle was employed by the Company in 1983, and was a maintenance employee in the repair shop. If a ''fixer'' could not adjust a machine, it was brought to the shop.

Cordle engaged in union activities. Thus, he wore union insignia, distributed leaflets, and was a union observer at the election. Department Manager Jay Sweetenberg testified that he knew Cordle was a union supporter.

Cordle was discharged a few days after the election, because he was ''voluntarily absent'' on that day.[287] In fact, Cordle showed up for work, was allowed to work for a short time, and was sent home.

Cordle was scheduled to begin work at 7 a.m., August 25, on a weekend. He called in at 7:03 or 7:04 a.m. to say he would be late. Department Manager Sweetenberg testified that the Company required an employee who was going to be late was required to call in before the beginning of the shift. However, after examining the Company's rules on absenteeism and tardiness at the hearing,[288] Sweetenberg could not find the rule. Asked whether there was another policy on call-ins prior to anticipated tardiness, Sweetenberg said that he was ''not aware of one.''

When Cordle called a few minutes after the beginning of the shift, he spoke to employee Leroy Linker. According to Cordle, he said that he would be a little late, but would be in as soon as he could. He asked Linker to inform weekend supervisor Walt Robinson. According to Linker, Cordle also said, ''Cover for me.'' Linker asserted that this meant either (1) ''If you're asked whether I'm there, say 'Yes,''' or (2) ''Do the work until I get there.''

Linker also agreed that Cordle asked whether Linker had seen Supervisor Robinson. Linker answered, ''Yes,'' but did not inform Cordle that Robinson was standing beside Linker when he was on the phone with Cordle. Robinson told Linker to have Cordle report to the office when he arrived.

Department Manager Sweetenberg testified that Robinson called him and said that Cordle had called and spoken with Linker. Sweetenberg was the weekend plant manager. According to him, Robinson would have ''automatically'' told him that Cordle had called and said he would be late. For this reason, Sweetenberg did not ask Robinson whether Cordle had called in.

Sweetenberg went to the plant. Cordle had already arrived, and Sweetenberg had a meeting with him and with Supervisor Robinson at about 7:45 to 8 a.m. Sweetenberg said that he told Cordle that he had two previous points and a suspension for tardiness. Sweetenberg was of the opinion that his Company's rules did not require a ''point'' for tardiness unless there was a second tardiness within the same month.[289] Accordingly, he told Cordle to go to work.

According to Sweetenberg, after Cordle left the office, Robinson told Sweetenberg that Cordle had called after the shift began. Robinson did not make this statement when Cordle was in the room. Sweetenberg knew that Linker was at work that day, but did not ask him what Cordle had said during the latter's telephone conversation with Linker.

In Sweetenberg's opinion, the fact that Cordle made the call a few minutes after 7 a.m. changed his infraction from tardiness to a voluntary absence—despite the fact that Cordle showed up for work. If Cordle had made the call at 6:58 instead of 7:03 a.m., he would have been tardy, and would not have incurred a ''point.'' In fact, Sweetenberg claimed, if Cordle had not called at all, his infraction would still have been tardiness, without a written warning. The fact that he did call, after 7 a.m., made his offense a voluntary absence. Sweetenberg called Personnel Manager Drumm and explained his theory. Drumm agreed, and Sweetenberg suspended Cordle pending discharge. The next day, the regular supervisor, James Medlin, discharged Cordle, for a voluntary absence, citing a prior warning, a suspension, and a verbal warning for a voluntary absence.[290]

Respondent's records show that Cordle received a written warning for tardiness on June 2 (after a prior verbal warning the prior day),[291] and a 1-day suspension for the same offense occurring on June 16.[292] On August 6, Cordle received a verbal warning for ''absence without permission.''[293]

Respondent's rule 18 falls within a group of rules called ''group D.'' Rule 18 simply reads: ''Irregular attendance; absence without permission; repeated tardiness.'' The description of group D offenses reads in relevant part:

> WRITTEN WARNING (In case of a second violation of a Group D rule within six months, the employee will be suspended from one to ten days without pay. In case of a third violation within six months, the employee will be discharged.[294]
>
> The Company's rules on absenteeism and tardiness read in relevant part:
>
> ''VA'' (Voluntary Absence)—An employee will be counseled for the first ''VA'' and disciplined for second ''VA'' within a three month period. Another ''VA'' within three months of the second will be cause for further disciplinary action.
>
> ''T'' (Tardy)—Employees should be at their work stations prepared to begin work at starting time. Any employee not complying should be counseled for the first ''T'' and disciplined for the second ''T'' within a one-month period.[295]

b. *Factual and legal conclusions*

Sweetenberg's claim that he did not learn about Cordle's call until after Cordle's departure from the conference in the office is difficult to believe. There is no reason why

[287] G.C. Exh. 12.
[288] G.C. Exh. 24.
[289] See discussion, infra.
[290] G.C. Exh. 12.
[291] G.C. Exh. 9. This warning is dated June 5.
[292] G.C. Exh. 10.
[293] G.C. Exh. 11.
[294] G.C. Exh. 23.
[295] These rules require that a certain procedure be followed: (1) for the first violation, discussion with the employee; (2) for the ''next violation'' a written warning for violation of rule 18; (3) another review with the employee; (4) the ''next violation'' within a 6-month results period in a second disciplinary action and a 1-day suspension; (5) a letter reviewing previous discussions and the consequences of continued violations; (6) for the third violation within 6 months, suspension pending discharge. G.C. Exh. 24.

Sweetenberg should not have known from the outset that Cordle had called in. Robinson should have told him ''automatically'' during Robinson's telephone call to Sweetenberg. The fact that Robinson sat in the office with Sweetenberg and Cordle and again failed to apprise Sweetenberg of this fact is even more difficult to understand. Only after Cordle left the office did Robinson inform Sweetenberg of Cordle's call, which, he said, included Cordle's asserted request to Linker that the latter tell management that Cordle called before 7 a.m. Robinson in effect told Sweetenberg that Cordle asked Linker to lie for him. It is obvious that Cordle made no such request to Linker. The latter claimed that Cordle told him to ''cover'' for Cordle. Linker gave two meanings to this asserted request, neither of which amounted to saying that Cordle had called before 7 a.m. Since Cordle was not present when Robinson made this accusation about him to Sweetenberg, he was in no position to respond. Sweetenberg did not bother to ask either Cordle or Linker what was said during this conversation. It is established Board law that failure to investigate asserted misconduct is evidence of discriminatory motivation. The Company's supervisors did more than fail to determine the truth—they set the stage so that it could not emerge.

Respondent's tardiness rules are an incomprehensible hodgepodge. It had two sets of rules which included provisions about tardiness,[296] yet neither of them contains the call-in rule which Cordle is supposed to have violated. Sweetenberg finally admitted on cross-examination that he was not aware of any policy on call-ins.

Rule 18, placed within group D, proscribes (1) irregular attendance, (2) absence without permission; and (3) repeated tardiness. Group D provides for suspension after a second violation within 6 months, and discharge after a third violation within 6 months. Does this mean the same violation within rule 18, i.e., two or three instances of tardiness, or of absence without permission? On its face, rule 18 appears to be only one rule, and any combination of its three offenses would seem to trigger the appropriate discipline. However, the Company's other document on absenteeism and tardiness[297] treats rule 18 offenses differently, as described above.

Sweetenberg obviously thought that discharge would be warranted under the rules if Cordle was deemed to be absent rather than tardy, i.e., Sweetenberg was following the second set of rules referring separately to absenteeism and tardiness. However, this does not follow, since Cordle's earlier infractions were for tardiness rather than absenteeism, and even under Sweetenberg's theory, Cordle would not have had three instances of absenteeism within 6 months. In any event, under this tortured reasoning, Sweetenberg concluded that Cordle would have been ''tardy'' if he had called in before 7 a.m. and would not have been discharged. Even more astonishing, Cordle would not have been discharged if he had failed to make any call! The fact that he did so made him absent, although he was present. This is all absurd.

The General Counsel has established a prima facie case that Cordle's union activities were a factor in his discharge, and Respondent has not rebutted that case. Accordingly, I conclude that the discharge violated Section 8(a)(3) and (1) of the Act.

[296] G.C. Exhs. 23, 24.

[297] G.C. Exh. 24.

17. The discharge of Ronald Pharr

a. *The facts*

Ronald Pharr was employed in the weave room, under the supervision of Percy Smith. Pharr wore union buttons and stickers to work. On August 14, another employee (Terros Brown) was giving Pharr some union stickers near Brown's locker. Supervisor Smith approached, and told them not to pass out ''that stuff'' on company time.

The events that followed are related above.[298] Smith told Pharr that he was going to administer a breathalyzer test to him. Pharr testified that he asked another employee to serve as a witness. I have found that Pharr proceeded to the location where the breathalyzer equipment was stored, and that Smith ordered him off the property, and threatened him with discharge by saying, ''That's one less vote for the Union.''

This matter was thereafter investigated by Personnel Manager Ben Davis. He interviewed Pharr on August 23, and claimed that Pharr admitted refusing to take the breathalyzer test. According to Davis, Pharr said that he went to employee Warren Nance, and asked him to be a witness. Later, according to Davis, Smith again approached Pharr, they had words, and Pharr said he would not take the test, and was leaving. Pharr denied saying he refused to take the test. On August 26, Davis discharged him for this reason.

b. *Conclusion*

Davis' investigation adds little to the case. His acknowledgment that Pharr asked another employee to be a witness at the breathalyzer test is inconsistent with Respondent's position that Pharr refused to take the test. In light of the fact that Smith ordered Pharr to get off the property after Pharr arrived at the site of the breathalyzer equipment, it is clear that Pharr's departure was pursuant to this order, and not a voluntary act. Smith's' statement that his action meant one less vote for the Union explicitly reveals Respondent's motivation.

I conclude that the asserted reason for the discharge was pretextual, and that Pharr was discharged on August 26 because of his support of the Union, in violation of Section 8(a)(3) and (1) of the Act.

18. The discharge of Earl White

a. *Summary of the evidence*

Earl White was hired as a probationary employee in mid-June. He was discharged on August 30.

White was assigned to the packing department, under the supervision of Jimmy Allen. He was trained in a wide variety of jobs—labeling, palletizing, lay-up operator, packing pillow cases and sheets, and, finally, L-seal operator. His trainer was Patsy Jamerson, who had at least nine other trainees.

Jamerson testified that White wandered off to other departments, and was late coming back from lunchbreaks. However, Supervisor Allen told all employees to come back

[298] Supra, sec. II,N.

promptly from breaks, and some who had been late were still employed at the time of the hearing.

Jamerson asserted that White did not want some of the packing jobs to which he was assigned, and, instead, wanted the L-sealer job. According to Jamerson, other employees could hear these protests. However, she did not know much time they lost because of White's asserted objections to Jamerson. White did perform the assigned jobs. He was ultimately assigned to the L-sealer job.

Jamerson contended that White was a ''problem employee'' and had a ''bad attitude.'' However, Eric Strickland, a current employee in the same department, testified that White was ''willing to learn.''

Jamerson testified that White came under her supervision within 2 weeks after he was hired, i.e., at about the end of June. She contended that she noticed something wrong with White's performance within a week after he came into her department, and complained about him to Supervisor Allen. She made another complaint a few days later, a third complaint a few weeks later, and a fourth complaint prior to White's assignment to the L-sealer job. There is no file memo or other document about any of these asserted complaints. According to Jamerson, White was one of only two employees in her department that supported the Union.

Ivey Mosely claimed that White had a gun in his car[299] and carried a knife. However, she never saw the gun, and admitted that it was a ''little knife'' that White used in his job. White threatened to shoot another employee, according to Mosely. She claimed that she reported this to Allen. However, the latter testified that he heard nothing about a gun or a knife. Mosely agreed that there was no actual fight between White and another employee. She claimed that she heard White make threats against Supervisor Allen, but did not report them.

Allen testified that he received a report that White got into an argument with employee Harold Caldwell, and threatened to kill him. Allen talked to both employees. He agreed that White denied threatening to kill Caldwell, and promised not to get into arguments with employees. Allen told White that threats to kill employees were against the Company's rules. Allen did not make a file memo of this incident, because probationary employees do not receive written discipline.

Allen contended that he received a report that White threatened bodily harm against Kevin Glasco, and that the two were about to fight. Allen questioned both employees, and White denied the threat. He said that he would not engage in any more arguments. Allen did not make a file memo of this incident.

Allen contended that he received a report that White had threatened Abraham Mincer with bodily harm. He spoke to White and told him that this could not continue. Allen made no file memo of this incident, which took place in July.

Contrary to Jamerson, Mosely claimed that White was the only employee who stayed late on breaks. She asserted that White did not work too hard. As indicated, White was assigned for training to a variety of jobs. Mosely testified that she was a ''spare hand,'' and worked wherever needed. Nonetheless, she asserted that she worked on the same line with White every day. Mosely opposed the Union. She reported to Jamerson that White put union pins on the wall.

Roslyn Hemphill testified that White put his arm around her and twice tried to get her to go out with him. Hemphill claimed that she complained twice about this to Allen. Trainer Patsy Jamerson testified that White would ''grab'' female employees and make ''sexual remarks'' to them. However, Jamerson did not make any report of this to Supervisor Allen, and denied that any other employee did so. There is no file memo of this asserted misconduct.

As these alleged events were taking place, White, according to his uncontradicted testimony, was on friendly terms with Allen, and joked with him.

I have found above that White started wearing a union button in early August. Allen told him not to attend a company meeting unless he took the button off and kept his mouth shut. White obeyed. Just before the election, Allen gave White some company literature which White returned with a union sticker on it. On the first day of the election, Allen violated the Act by telling White that he had better ''forget that damn Union shit.''[300] Two days after the election, Allen again violated the Act by telling White that he could be suspended or fired for singing union songs in the smoker. White wrote an extensive file memo.[301]

White was assigned to train on the L-Sealer machine at about the time of the election. Eric Strickland testified that, in order to be qualified on the L-sealer, an employee had to ''run production'' on 3 consecutive days. White was ''willing to learn,'' but received only ''brief instruction.'' Jamerson had 10–12 other employees to train. It is usual for a trainee not to know the job well, according to Strickland. Supervisor Allen testified that 2 weeks of training were required to qualify for the L-sealer. Jamerson testified that it was a ''frightening machine.''

Jamerson asserted that she gave White a week to a week and a half to train on the machine, and then prepared to get him to ''qualify'' as an operator. However, Jamerson admitted that White was still training when he began to qualify. White testified that he worked 2 half days on the L-sealer and was then fired. Allen told him that he was not making production and was not taking his job seriously. However, nobody told him that he was doing anything wrong, or showed him any production data.

Allen asserted that he did not discharge White because he failed to qualify. The reasons advanced by Respondent in the notice of termination are: ''Interfered with other employees' job performances by causing disruptions. Employee was not committed to reaching his required performance goals. Employee had conflicts with other employees.''[302]

b. *Factual and legal conclusions*

The bias of Respondent's witnesses and the contradictions in their testimony are obvious. None of the charges leveled against White was reduced to writing until he wore a union button, and sang union songs in the smoker 2 days after the election. In sum, threats to kill, a firearm allegedly on the premises, sexual harassment, and wandering around, were

[299] Carrying a firearm onto the Company's premises was punishable by discharge. G.C. Exh. 23, rule 11.

[300] Supra, sec. II,J,6.

[301] Supra, sec. II,O,2.

[302] R. Exh. 41.

matters of relative indifference to the Company until White began engaging in union activities.

The ambiguous termination notice does not state what was meant by ''disruptions.'' The assertion that White was not committed to reaching required performance goals is contradicted by Strickland, whom I credit, that White was willing to learn. As to ''conflicts'' with other employees, Allen showed little interest until it came time to write out a reason for White's discharge.

I credit White's testimony, corroborated by Strickland, that he received only 2 half days of training on the L-sealer, that he was then fired, and that Allen told him that he was not meeting production goals and was not taking his job seriously. I also credit White's uncontradicted testimony that he was not told that he was doing anything wrong, and was not given any production data.

The fact that the only file memo which Allen wrote about White concerned the union singing incident 2 days after the election, and his discharge a week later, demonstrate that it was White's support of the Union which was the motivating factor in his discharge. Allen's unlawful interference with White's statutory rights, and the singing incident in the smoker were the only events intervening between White's asserted misconduct and his discharge. The Board and the courts have held that this timing constitutes evidence of discriminatory motivation.[303] The other asserted reasons were simply dredged up to support the discharge, and were pretextual. I conclude that, by discharging White on August 30 because of his support of the Union, Respondent violated Section 8(a)(3) and (1) of the Act.

19. The discharge of Susan Cavin

a. *Summary of the evidence*

Susan Cavin was hired in February 1990 as a side hem and trim operator, and was discharged in September 1991, allegedly for producing too many bad hems on towels. An understanding of the issues requires some discussion of the process by which hems are produced.

Fabric which is two towels in width arrives on a truck, and is fed into a machine by an employee called a ''stager.'' It comes over a roller, under a table, and up on to a platform, where the hems are sewn. Each machine has two sets of sewing machines that hem the outer edges of the fabric, which has thread that would normally interfere with the hemming process. Accordingly, air from two pipes blows the threads away. The outside edges are then hemmed. Cavin had two machines to operate simultaneously.

The fabric goes through the machines at 16.6 yards per minute. As a truckload is finished, the operator must sew the end portion of the prior load onto the new load to maintain a continuous flow. The operator is also required to replace broken threads and change the color of threads.

The operator has a personal stamp with which she is supposed to stamp both outside seams of the double fabric going through both machines. According to Cavin, the Company wanted 10 percent of the hems stamped. Section Foreman Bobby Fowler said it was 50 percent. At the end of each load, a ''string ticket'' was attached. If a machine was producing bad hems, the operator was supposed to stop the machine, and list it on ''the board'' for a fixer.[304]

After this process, the fabric goes to another operator running three machines who cuts the double width down the middle with ''jostrom knives.'' He then hems the two sides thus produced, and puts his stamp on these seams. At that point, the seams with the prior operator's stamps are cut off, and placed with the load of towels. These then go to an inspector. It is the jostrom knife operator's responsibility to see that ''the seam follows the towels,'' so that the Company can fix responsibility for bad hems.[305]

The Company had a constant problem with bad hems, and utilized bad hem repairers to correct them. Foreman Bobby Fowler testified that he had regular ''bad hem'' meetings with his operators in the summer of 1991.

Cavin was an active union supporter. She handed out leaflets, went to press conferences, and wore union buttons and T-shirts. Foreman Bobby Fowler testified that he knew she was for the Union, and that she was quite vocal. Supervisor Milstead said she was a union pusher.

Respondent justified its discharge of Cavin on the ground that she had three ''flagrant'' bad hem violations of company rules within a 6-month period. This was based on the percentage of bad hems produced.[306] According to Respondent's witness Melissa Hudson, the percentage is not that of an operator's total production for any given day, but rather, for a particular truckload. Asked whether the percentage would go down if the next truckload had all good hems, Hudson answered, ''They don't combine trucks.''

Cavin had a number of warnings for bad hems prior to the advent of the union campaign, but only one resulted in a ''point,'' although Milstead admitted that an earlier one should have been a ''flagrant'' violation. Cavin's first written warning occurred on June 5, just prior to the advent of the union campaign. She was charged with producing 20.8 percent of bad hems.[307] The next one occurred on June 23, when Cavin was charged with running three loads of Holiday Inn towels upside down. She pointed out that the stager had put the towels into the machine upside down. Cavin was suspended for 1 day, and the stager received a warning.[308]

On June 26, Department Manager Tim Jones wrote Cavin a letter, saying that she had accumulated two points, that they would remain ''active'' for 6 months, and that a third one within that period would result in discharge.[309]

Prior to June, Cavin had worked on other machines. She was then transferred to machines 614 and 615, which were at the end of a row of machines serviced by a common air

[303] Among many cases, see *Southwire Co. v. NLRB*, 820 F.2d 453 (D.C. Cir. 1987); *Abbey's Transportation Services v. NLRB*, 837 F.2d 575 (2d Cir. 1988); *D&D Distribution Co. v. NLRB*, 801 F.2d 636 (3d Cir. 1986).

[304] Testimony of Cavin and Foreman Bobby Fowler.

[305] Testimony of Bobby Fowler.

[306] Supervisor Milstead stated that 5 to 15 percent of bad hems constituted a nonflagrant violation and that three such violations in 2 weeks were acceptable. However, three non-flagrant violations within 2 weeks resulted in a written warning and a ''point.'' More than 15 percent of bad hems was a flagrant violation, resulting in a written warning and a point. These rules were not in writing, but had been utilized by the Company, according to Milstead.

[307] R. Exh. 22.

[308] R. Exh. 23.

[309] R. Exh. 24. This is the first evidence of Respondent's asserted 6-month rule pertaining to ''flagrant'' bad hem violations.

line. These two machines had persistent low air pressure. According to Fowler, the air goes from machine to machine. Fowler claimed that he ''rerouted'' the air and cleaned the filter before the union campaign, and Milstead asserted that he worked on these machines in August. Nonetheless, Cavin put her machines ''on the board'' for malfunctioning. At a ''bad hem'' meeting on September 3, Cavin again complained about low pressure, and Milstead said he would look into it. According to Cavin, Milstead then came to her machine, and the pressure was still low. Cavin was discharged on September 21. Sheila McIntyre, a current employee, testified that fixers worked on machines 614 and 615 for 2 to 3 days after Cavin's discharge, and finally corrected the airflow problem. The fixer reports show that Cavin was having trouble with her machine in September 18 and 19, and with air flow on September 20.[310] She put her machine on the board.

During the lunchbreak on September 21, Milstead told Cavin that she had produced 400 bad hems out of 1200 towels, and suspended her pending termination.[311] He showed her one seam with her seam number on it. Cavin testified on cross-examination that she told Milstead the towels were not all hers. On recross-examination, Cavin stated that although they came from the same machine, they could have come at different times, i.e., from other operators of the same machine.

Cavin returned on September 23, and had a meeting with Department Manager Tim Jones. She told him that it was unfair to terminate her, because she was having airflow problems and had put her machine on the board.

On September 23, Milstead and superintendent Raymond Ross executed a notice of termination. It cites the accumulation of three ''points,'' on June 5 and 25, and September 21. In the explanatory section appears the legend: ''Employee put out to [sic] much bad work. Does not support the Company.'' At the bottom of the form, a recommendation against rehiring is checked because the employee was a union pusher.

In the explanatory section, following the statement that the employee did not support the Company, the following statement appears in different type:

> These comments are unauthorized and contrary to Company policy. They are to be disregarded. Employee is eligible for rehire. Due to pending litigation, these comments will not be removed while litigation is continuing. Once litigation is terminated, these comments are to be deleted. Supervisor has been instructed regarding Company policy and legal requirements.[312]

Raymond Ross testified that when he signed the termination notice, he did not recall seeing the comments about union pusher, or ''Puts out bad work.''

Milstead testified that he prepared the notice of termination except for the statement beginning, ''These comments are unauthorized.'' Asked why he stated that Cavin should not be rehired because she was a union pusher, Milstead replied, ''Because she was a Union pusher.'' Later, according to Milstead, Personnel Manager Dick Reece told him that it was ''illegal and not Company policy to put such information on a paper like this.''

Cavin testified that the comments which Ross did not recall were added to the document after the charge had been filed and the Board had commenced its investigation.

b. *Factual and legal conclusions*

Assuming arguendo the validity of Respondent's asserted policy of discharge after three ''flagrant'' violations within 6 months, the evidence is not persuasive that Cavin in fact violated the rule. Respondent's method of proving that an operator violated the rule is full of loopholes—the separation of the stamped seam from the towels by the jostrom knife operator, and the transfer of these separated pieces to the inspector. None of these individuals testified, and Milstead's testimony is hearsay. And he could produce only one seam with Cavin's stamp out of an alleged 400 bad hems. And no string tickets. On Cavin's testimony that the Company wanted 10 percent of the seams stamped, there should have been 40 stamps. On Fowler's declaration that 50 percent had to be stamped, there should have been 200. But Milstead came up with only one! After Cavin denied during the General Counsel's case in chief that these were all her towels, Respondent presented no evidence on this issue.

Respondent presented evidence that producing bad hems because of an airflow problem was not an excuse. That begs the question raised above as to the last charge against Cavin. Respondent presented evidence of bad hem warnings given to other operators. But no evidence that any had been discharged.

Prior to the advent of the union campaign, Milstead was lenient toward Cavin by giving her a verbal warning for a flagrant violation. She had no airflow problems at that time. And yet, when the machine to which she was transferred developed constant problems in midsummer, no such leniency was manifested by Respondent. These problems were not really corrected until after she was discharged (according to Sheila McIntyre whom I credit). Respondent merely argues that producing bad hems because of poor airflow is not a valid defense. The discretion in administering discipline, which Milstead displayed prior to the union campaign, disappeared as soon as Cavin became a union pusher.

Finally, I consider the seemingly blatant admission in the termination notice. As to this, Respondent advances the following argument:

> While Milstead's statement that Cavin should not be rehired because she was a ''union pusher'' undoubtedly establishes knowledge of her union activities and animus toward those activities, it does not necessarily establish that her discharge was motivated by that animus.[313]

But the termination notice also states that her *discharge* was caused in part by the fact that she ''did not support the Company.'' This means because she supported the Union. Respondent's argument artificially bifurcates Respondent's animus into discharge and rehire modes, and I reject it.

Respondent argues that Cavin's discharge took place well after the election. However, the Company committed unfair

[310] C.P. Exhs. 3, 4, 5.
[311] R. Exh. 25.
[312] G.C. Exh. 7.
[313] R. Br. 477.

labor practices after the election, and the present matter is still continuing.

I conclude that Respondent's reasons are pretextual, and that it discharged Cavin on September 21 because of her support of the Union, in violation of Section 8(a)(3) and (1) of the Act.

20. The discharge of Cathy Thompson

a. *Summary of the evidence*

Cathy Thompson was employed in January 1979, first in another job, and then as a labeler. On November 6, 1991, she was discharged on the asserted ground that she falsified the number of labels affixed to towels by her labeling machine. Thompson did this, it is alleged, by causing the machine to record labels when no towels were being run through the machine. A description of the labeling process will be helpful.

The labeling machine is a device which automatically sews labels onto towels. It is located within a recessed area of a table about 3 by 4 feet in dimensions. The machine itself is about 12 inches' wide, about 14 to 24 inches' long (the estimates varied), and extends lengthwise in front of the operator. Towels feed into it from the left underneath a ''presser foot.'' The machine is actuated by a foot pedal located underneath the table. One depression of this pedal causes a label to be sewn onto the towel, a process which takes about 10 seconds and is called a ''pick.''

Labels come in varying sizes. When a different size arrives, the machine must be opened with a wrench and the ''bite'' changed to fit the new label. A group of towels requiring different labels are called ''odds.''

Operators are paid according to the number of labels they affix to towels. The only way the Company has for recording the total is the number of picks. There are two clocks which record this. The smaller clock records the number of picks for a particular label. Since the operators are paid on a different piece rate for different labels, this clock must be turned back to zero each time a change occurs. The adjustment of the small clock is done by another employee, sometimes called a coordinator, or a layup employee. A master clock records the total number of picks of any type for the day.

Thompson testified that the production rate for a normal run of towels ranged from $6 to $7 per thousand labels. The average of these, or $6.50, results in a figure of a little over half a cent to the operator for each pick. When the towels were ''odds,'' requiring a constant change of labels, the rate was $15 per 1000, or a penny and a half for each pick.

There are times when the machine must be operated without a towel in it, i.e., a pick is produced without a label being sewn. One example is when the ''bite'' is being changed to accommodate a different label.[314] A second instance is when a broken thread is being replaced, or a thread color changed.[315] A third occasion arises when a fixer is working on the machine. When the machine is operated without a towel in it, it produces a different, more metallic sound, than it does with a towel being processed.

Thompson signed a union card on the first day of the campaign, and thereafter talked to employees about the Union in the smoker in the presence of her supervisor, Reganna Earwood. Her picture appeared in a union publication prior to the election. Earwood testified that she knew Thompson was a union supporter after seeing her picture in a union ''yearbook,'' which, according to Earwood, was published in July.

Earwood testified that, in about February, Walter Waller reported to her that Thompson was causing picks without towels being in the machine.[316] Earwood testified that she could not do anything unless she herself saw Thompson to do this. Accordingly, from about February or March until October, Earwood ''observed'' Thompson six to eight times a day, from the smoker.

Walter Waller, on the other hand, testified that he reported on Thompson's alleged misconduct ''right before she left,'' i.e., in October. According to Waller, he then saw Thompson do this ''several times.''

Sam Jallah was another employee who reported the same conduct to Earwood. However, he was not hired until July, and, accordingly, could not have made any report in February. Jallah testified that he saw Thompson ''hit the pedal'' five times, i.e., five picks, without a towel in the machine. He reported this to Earwood, who told him to ''watch'' Thompson. This happened again, with the same number of picks, and Jallah reported it to Earwood. Although Thompson assertedly did it again, with the same number of picks, Jallah made no further reports to Earwood. He received a 50-cent raise just before his testimony. Earwood admitted that she wrote a memo saying that Jallah claimed Thompson ''pushed the pedal'' while doing odds, changing the thread, or changing the bite.

The third informant against Thompson was Kelly Walker. He was hired about 2 weeks before Thompson was discharged, and, accordingly, could not have reported on her beginning the prior February. According to Walker, Thompson produced 500 to 600 false picks every night. He reported this to Earwood. Other labelers were also doing the same thing, but Thompson was doing it more than others. Walker first asserted that he reported the other labelers to Earwood, and then denied that he did so. Walker was a layup employee for Thompson and other labelers, and admitted that he had disagreements with Thompson over his asserted failure to keep her supplied with towels. Earwood could remember very little of Walker's reports, except that Thompson pushed the pedal when changing threads.

Coming now to the events of October 28, Department Manager Charles Claussen testified that he was discussing these employee reports with Supervisors Earwood and Blalock a little after 3 p.m. He told Earwood that she would have to ''catch'' Thompson at it.

Thompson was doing ''odds'' that day which, as indicated, required frequent change of ''bites'' and therefore picks without towels. The machine immediately to Thompson's right was normally run by Yvonne Booth. However, this machine was broken down, and a fixer was working on it. This also requires running a machine without towels. Booth was working a spare machine to Thompson's left, a few feet away.

[314] Testimony of Thompson and Yvonne Booth, a current employee and former instructor.

[315] Yvonne Booth testified that there was no other way to change thread except by depressing the pedal.

[316] We have previously met Waller. Supra, sec. II,A,2.

Earwood testified that she was taking a break in the smoker, and was alone. On direct examination, she testified that Thompson's machine was 25 feet away, and that she could see Thompson's legs and feet underneath the machine. Earwood claimed that she saw Thompson ''push the pedal'' without a towel in the machine, three to five times. Thompson was reaching around for labels. On cross-examination, after being confronted with a memo which she wrote about the event, Earwood admitted that she could not see Thompson's machine from her original position. Instead, she assertedly heard the distinctive sound of a labeling machine being run without a towel in it. Earwood said that she then slid on the bench several feet, and repeated her original testimony as to what she saw Thompson do. After being presented with her pretrial affidavit, Earwood agreed that she saw this only two more times.

Earwood asserted that Yvonne Booth's machine, on Thompson's right, was the only one she could not see, because of a column. Booth was then working on the spare machine immediately to Thompson's left, but Earwood said nothing about this and did not know that Booth's regular machine was being fixed.

Thompson testified that her machine cannot be seen from the smoker itself, but only from stools located outside its exit door. A large column partially blocks the view. Thompson also affirmed that the room was very noisy, and that it would be impossible to ascertain from the smoker which machine was making a metallic sound denoting the absence of towels. Booth's nearby machine on which the fixer was working did not have towels in it. Thompson averred that the smoker was to the left of her machine and that she depressed the pedal with her right foot. There was nobody in the smoker before she was suspended. Yvonne Booth corroborated Thompson's testimony.

Earwood did not approach Thompson's machine or speak to her. Instead, about 4:20 p.m., she returned to Claussen's office and reported that Thompson was running her machine without towels in it. Claussen ordered Thompson suspended pending termination. Earwood spoke with Thompson, and originally averred that the latter ''cried,'' and told Earwood to give her a write-up. Upon being confronted with her pretrial affidavit, Earwood admitted that Thompson said she could not remember running her machine without towels. Thompson testified that she denied the accusation, saying that she would not give up 12-1/2 years for something that would not give her a dime.

Thompson called Claussen that night, but he told he that he could not do anything over the phone, and advised her to see Personnel Manager Ron Lisenby. The latter told her that a decision would have to wait until plant manager Bob White's return from vacation.

Earwood did not consult any other employees about this. She and Blalock wrote up what Respondent calls a ''Termination Fact Sheet.'' Claussen signed it without calling Thompson or any other employee about these events.

Thompson met with Plant Manager White and Personnel Manager Lisenby on November 5, and denied the accusations against her. White told her that he would give her an answer the next day. He did so by phone, and informed her that she was discharged based in part on the fact that she had been ''cautioned'' about this in 1979, and again in 1983. As to the 1979 incident, Thompson, who was hired in 1979, affirmed that she had just started labeling. She did not recall the 1983 caution.

There is no evidence that Respondent discharged any other employee for ''pushing the pedal.'' Supervisor Blalock testified that employees Tracy Miller and Gina Duplisea had engaged in similar misconduct, but had not been discharged. In fact, according to Blalock, the entire line of labelers and layup men had been sent home from work ''for cheating.'' But nobody was discharged.

Sam Jallah testified that he had a conversation with Supervisor Earwood subsequent to the discharge. Earwood told him that the Company had fired Thompson ''because of the Union,'' that she had ''taken them to court,'' and that Jallah would have to testify.

b. *Factual and legal conclusions*

Since Respondent's evidence leads to different conclusions, it is difficult to determine where to begin. If, as Earwood stated, Waller reported to her about Thompson in February, and Earwood then ''observed'' Thompson six to eight times a day from the smoker, the only warranted inference is that this intense surveillance did not produce any proof for 8 months, until after the union campaign and Earwood's meeting with Claussen on October 28.

Waller, however, did not confirm the longevity of this surveillance. Shortly before Thompson's discharge, he reported that he saw her ''push the pedal several times.'' Although Sam Jallah contended that he saw Thompson ''hit the pedal'' five times on several occasions, he only reported two of the occasions to Earwood. Although Walker claimed 500 to 600 false picks a night, Earwood conceded that Jallah and Walker said Thompson was doing so on occasions when the absence of a towel was justifiable. Despite Walker's claim, which I consider to be grossly exaggerated, Earwood could remember little of what Walker said, except that it occurred when Thompson was changing threads. Waller and Jallah received pay increases before their testimony, and Walker had a personal dispute with Thompson. I credit nothing that Walker said, because Earwood could not remember it, while Waller's and Jallah's assertions were vitiated by Earwood's admissions. Even if credited, the total picks amounted only to a few pennies in compensation to Thompson.

Earwood's testimony about her own surveillance on October 28 is just as difficult to accept. After being confronted with her own memo, she conceded that she could not see Thompson from the point in the smoker where, she originally asserted, she was sitting. She heard the noise of a machine without towels. I credit Thompson's testimony that it was so noisy that no one could tell which of several machines had a metallic sound. A fixer was working on Booth's machine, and Booth was immediately to Thompson's left, working on the spare machine.

Finally, according to Earwood, she moved down on the bench, although Thompson contended that the only point from which she was visible was near the exit of the smoker, on stools. Earwood claimed that she could see Thompson's feet. However, the smoker was located to the left of Thompson's machine, and she depressed the pedal with her right foot. Yvonne Booth must have been visible to Earwood, who did not mention Booth, and did not know that her regular machine was in repair.

Instead of approaching the work area and confronting Thompson, Earwood went back to Claussen with her report. I do not credit her testimony because of the contradictions in it, and because Thompson was a more believable witness and was corroborated by Booth.

Thompson's discharge then proceeded in routine manner. Earwood and Blalock prepared, and Claussen signed, a ''Termination Fact Sheet'' without talking to any other employees. Not even Booth, who was right next to Thompson, or the fixer, who was on the other side, Although Thompson was granted an interview with the plant manager a few days later, there is no evidence that he conducted any investigation or in any way questioned the ''facts'' that had already been determined.

Respondent relies in part on the fact that, back in 1979, a supervisor had cautioned Thompson about this subject. But Thompson had just been employed and, presumably, was still learning the job. I credit Thompson's denial of a similar event in 1983. In any event, the record contains indisputable evidence of Respondent's disparate and lenient treatment of similar conduct by other employees.

Finally, as Jallah testified, Earwood told him that Respondent had discharged Thompson ''because of the Union,'' and that the latter had ''taken them to court.'' This evidence supplements that which I have already considered.

The General Counsel has established a prima facie case that Thompson's union activities were a factor in her discharge, and Respondent's asserted reasons for doing so are pretextual. I conclude that Thompson was discharged on October 28 because of those activities, in violation of Section 8(a)(3) and (1) of the Act.

21. Oreida Clarke[317]

a. *Summary of the evidence*

As described above,[318] Oreida Clarke, was employed in 1988, and had provided supplemental services as a translator for Spanish-speaking employees. She had done this for about 2 years in her own department (sheet distribution) and in other departments. Clarke normally worked the second shift, beginning at 3 p.m., and performed her translating duties in the morning. She did this at the request of Personnel Director Harold Turner, and was compensated for her services in addition to her regular pay.

Clarke described the translation process. She first assisted the applicant in answering numerous questions on a medical form as to whether the applicant had a particular disease or impairment. She then had to participate in the physical examination. ''I go in there with the nurse and she will tell me to tell them . . . to bend down, touch their knees, walk and stand up straight.'' The applicant then went for a hearing test, and Clarke informed him or her which buttons to push. Following that were various blood and chemical tests and an interview with Personnel Director Turner, who gave the applicant final instructions. The entire process required 3 hours, and Clarke was with the applicant during all of it. On one occasion, it took 7 hours.

Clarke testified that she engaged in translation services three to five times monthly. On one occasion, she had three applicants simultaneously, a ''hectic'' experience. Personnel Director Turner agreed that he used Clarke as an interpreter for about 2 years. Sometimes she would be utilized several times a week. Turner was asked whether these services were ''continuous'' in nature. He replied: ''Maybe. We could have gone 2 or 3 months without using her, or use her two or three times in a month, skip 3 or 4 months.''

Clarke acknowledged that applicants could bring family members to translate for them, and that she would not be utilized on these occasions. However, this happened only ''sometimes,'' and she translated for applicants ''most of the time.''

Clarke was a union activist, and her picture appeared in a union publication. Turner spoke to her about it, but continued to use her translating services, until April 1992. He praised the quality of her services.

I have found that Respondent violated the Act by posting a notice threatening Spanish-speaking employees with termination and/or imprisonment if they signed union cards.[319] This finding was based in substantial part on Clarke's testimony given on April 9, 1992.

About 2 days after her testimony at the hearing, Clarke translated for an applicant from El Salvador, on Turner's request. He was hired. The applicant called Clarke at her home, 2 to 3 days' later, and asked whether she could intercede to get him transferred to another job. Clarke called Turner at the office, and communicated this request. Turner replied that it could not be done. Further, he told Clarke, the Company's attorneys had told him that Clarke testified at the hearing. People in personnel said she was a union activist and it would not be advisable for the two of them to associate. Turner also said he would not be using her for translation services.

Clarke has not been requested to serve as a paid translator since that time. About a month later, a Spanish-speaking former employee wanted to be rehired. Clarke drove him to the employment office, but did not enter herself. Turner came out, and Clarke translated for the two of them. She was not compensated for this service. Clarke testified that Spanish-speaking employees have been hired in the mill since April, including one in her department.

Turner agreed that he has not used Clarke as a translator since April 1992. He was positive that her last paid receipt was in that month.

According to Turner, he had a conversation with one of the Company's attorneys in the parking lot on April 9, the day Clarke testified. The attorney told him that Clarke had testified about the posting of a notice. Turner then went to his own supervisor, Mickey Hicks, and asked whether he should continue using Clarke as a translator. The reason he asked this question, Turner stated, was ''because she testified.'' Hicks told him to consult another company attorney. Turner did so, he asserted, 2 or 3 days after he talked with the first attorney in the parking lot, i.e., in about mid-April. Turner testified that he could not speak Spanish, and, if Clark was ''pro-Union [Turner] didn't know what she might

[317] A complaint alleging discrimination against Oreida Clarke issued on June 29, 1992 (Case 11–CA–15006) during the progress of the hearing, and was consolidated with the other cases then in being heard.

[318] Supra, sec. II,I.

[319] Supra, sec. II,I.

be telling an employee.'' The second attorney told Turner to continue using Clarke as a translator, and said that he had ''found a charge that she wasn't being used as an interpreter.[320]

Turner agreed that after, his conversation with the first attorney in the parking lot, Clarke called him. All she did was ask him to go to lunch, and he replied that it would be better if they did not ''associate'' anymore.

Turner testified that he interviewed ''a lot'' of applicants since April, but denied that he consciously refrained from using Clarke's services—he simply did not need them. Applicants either could get along in English themselves, or brought a family member to translate for them. In midsummer, Turner discontinued interviewing, and assigned this function to two other employees. They hire Spanish-speaking applicants, but do not use interpreters. If they need one, they are to consult Turner, but no need has arisen.

b. *Factual and legal conclusions*

Turner admitted that he asked supervisor Hicks whether he should continue using Clarke's services ''because she testified.'' His reason for asking the same question of the second attorney was that, if Clarke was prounion, Turner would not know what she might be telling employees (in Spanish). This testimony establishes that Clarke's prior testimony and her support of the Union were factors in Respondent's failure to use her translation services after April. Even though the second attorney may have advised Turner to continue using Clarke, this advice came after a charge on her behalf had already been filed; in any event, her services were not utilized.

Clarke's testimony that she interpreted for an applicant from El Salvador about 2 days after her testimony on April 9 is corroborated by Turner's testimony that her last pay receipt was in April 1992. Clarke's averment that the applicant from El Salvador called her a few days later and asked her to arrange a transfer for him is uncontradicted. Clarke's statement that she then called Turner is corroborated by the latter.

In these circumstances, Turner's testimony that Clarke only asked to go to lunch with him is unlikely. There was business at hand—a transfer request—and Clarke was the one to whom the request had been made. I find that Clarke did transmit the transfer request to Turner. I also credit Clarke's testimony that Turner added that the two of them should not ''associate,'' and that he would not be using her as a translator.

Turner's acknowledgment of the reasons he asked his supervisor and the company attorney whether he should continue using Clarke, and the timing of his end to her services—immediately after her testimony—establish the General Counsel's prima facie case.

I turn now to Respondent's defense, to wit, that it did not need Clarke's services after April. This period extended for about 7 months, from April to November 17, 1992, the date that Turner testified. It is undisputed that Spanish-speaking individuals applied for employment during this period. Turner contended that there was no need because the applicants either understood English themselves, or brought a family member to translate for them.

Clarke testified that she performed these services 3 to 5 times monthly prior to April. Turner suggests that it was intermittent, although his testimony is not consistent—a ''skip'' for ''2 or 3'' months, or ''3 or 4'' months. Respondent was in possession of pay receipts or checks showing the actual dates of Clarke's services. Clarke merely testified that she translated for these applicants ''most of the time.''

Clarke's description of the application process suggests a relatively complex procedure, including the translation of the names of various diseases and bodily impairments, as well as understanding of devices such as a hearing tester. Turner admitted that Clarke was better than a predecessor. I conclude that, although there were undoubtedly some gaps in the dates of Clarke's services, the evidence of which is not in the record, she provided these services on the average of 3 to 5 times monthly.

It has been stated that ''a thing once proved to exist continues as long as is usual with things of that nature.[321] Thus, the need of applicants for translation services established prior to April 1992, is presumed to continue, absent proof to the contrary. This means either that the post-April applicants were more fluent in English, or had more fluent and available family members. Respondent's position is that every applicant during the 7-month period from April to November satisfied these criteria.

Respondent's evidence is found in the testimony of Personnel Director Turner. That testimony has no details. Further, Turner did not conduct any interviews after midsummer, and Respondent did not produce either of the two employees who replaced him in this function.

I consider it highly improbable that the characteristics of all of the Spanish-speaking applicants changed so radically after April 1992, that not one of them needed Clarke's services. In essence, Respondent has not provided persuasive evidence of its ''lack of work'' defense.

I conclude that Respondent stopped giving Clarke translation assignments after April 1992 because she had previously given testimony against the Company in this proceeding. In so doing, Respondent violated Section 8(a)(4) and (1) of the Act.

The allegedly unlawfully grant of a wage increase to nonunion increase to nonunion employees together with a refusal to grant a comparable increase to union employees

1. The allegations

The complaint alleges that Respondent granted an across-the-board increase to its nonunion employees on September 11, while failing to offer the same increase to employees represented by the Union at its Eden, North Carolina, Fieldale, Virginia, Phenix City, Alabama, and Columbus, Georgia plants. These actions are alleged to be violative of Section 8(a)(3) and (1) of the Act.[322]

The complaint also alleges that, on about September 27 and thereafter, Respondent in bad faith failed to propose to the Union the general wage increase granted to its employees

[320] The original charge in Case 11–CA–15006 was filed on May 18, 1992. G.C. Exh. 1(xxx).

[321] Mont. rev. C. § 3-1301-7, par. 32 (1964), cited in 9 Wigmore, *Evidence* § 2530 fn. 7 (Chadbourn rev. 1981).

[322] G.C. Exh. 1(kkk), pars. 22, 33, 34.

at its nonunion plants. This action is alleged to be violative of Section 8(a)(5) and (1) of the Act.[323]

2. Background

The Union represented the employees in the four plants listed above for many years. The Company also had a plant at Salisbury, North Carolina, where the employees were represented by United Textile Workers (UTW), and two plants where the employees were not represented (Smithfield, North Carolina, and Scottsboro, Alabama). The contracts at the union plants were typically 3 years in duration, with a wage reopener every 6 months.

One of the issues is whether the Company gave similar or dissimilar raises to its unionized employees as compared to those were not represented. The parties stipulated that the raises were identical from 1978 through 1985.[324]

In 1985, the plants which are the subject of this litigation, located in Kannapolis and Concord, North Carolina, were owned by Cannon Mills. In that year, the Union conducted an unsuccessful attempt to organize these plants. In the following year, 1986, they were purchased by Respondent, which changed its name to Fieldcrest-Cannon.

The union official principally involved in the negotiations since about 1980 was Bruce Raynor, an International vice president. He testified that a dispute arose during the 1986 negotiations over the Company's attempt to eliminate a 5-cent hourly differential pay provision for third-shift employees.

Company Official Ozzie Raines testified that Respondent gave an average increase of 4.4 percent to its nonunion employees in June 1986 while the dispute over the third-shift differential pay was going on with the Union herein. At the same time, Respondent entered into a supplemental agreement with UTW, representing the employees at its Salisbury plant, which provided for the same increase, as that given to the nonunion employees, 4.4 percent. This agreement canceled the third-shift premium of 5 cents hourly except for employees already assigned to that shift who remained there.[325]

Meanwhile, negotiations continued with the Union herein. Agreement was reached in August 1986, and provided for a wage increase of 4-1/4 percent. The third-shift premium continued until October 5, 1986, at which time it was canceled and employees received a $175 cash ''buyout'' in its place.[326] A newspaper story describing this agreement quoted Company Negotiator Raines as saying he was ''sorry it couldn't have been ratified six or seven weeks ago when we put the proposal into effect in the rest of the Company.''[327]

The parties further stipulated that, in 1987, the unionized plants received a 4-percent wage increase. The rates for employees at the recently acquired Cannon Mills were adjusted on an individual basis to conform to rates elsewhere in the Company. The average increase of these individual adjustments amounted to 3.23 percent. The same process took place in 1988—the Company's other plants received a 4-percent increase, while the Cannon Mills rates were further adjusted, the average increase being 3.74 percent.

In 1989, all employees, Union and nonunion alike, received a 4 percent increase. There was no pay raise in 1990.

Union Vice President Raynor testified that company officials repeatedly said that wage and benefit increases were the same companywide. Union information requests for the cost of various proposals were answered on a companywide basis, covering union and nonunion employees alike.

3. The 1990–1991 negotiations, the election campaign, and the alleged unfair labor practices during bargaining

Wage reopener negotiations started on November 30, 1990. The company representatives were Respondent's vice president, Ozzie Raines, Regional Personnel Administrator Bob Moore, and various personnel directors. The Union was represented by International Vice President Bruce Raynor, Comanagers Sydney Young and Carlton Rakes, and various staff members.

The Union presented proposals for fringe benefits, an additional paid holiday, a pension improvement and retirement plan, and reinstatement of the third-shift differential. No pay proposal was made at this session. Raines said that business was terrible, and that the Company expected to lose money. The Company responded to a prior information request on a companywide basis.

The second session was held on February 5, 1991. Raines said that the Company's performance was worse than expected. A wage increase which the Union had obtained from another company was discussed. Raines said that, using a hypothetical figure of 4 percent, such a raise would cost the Company $11 million, and that he would not recommend it. Raynor asked why the Company did not give a raise to its union employees only. Raines laughed, and said that the Company had never done this before, was not about to do it, and that what it did it would do for everybody.[328]

The parties stipulated that sessions were held on March 1, April 2, June 7, and July 16 (during the campaign). Raynor described a session which he said was conducted in May.[329] Raines said that there had been some improvement in the Company's finances. The union officials asked how many employees would be covered if there were a raise, and Raines replied about that there were approximately 16,000 hourly employees. This would have included 4000 to 4200 union employees.[330]

The last meeting prior to the union campaign was held on June 7. The Union reported an increase in contributions to a pension plan which it had just obtained from another company. Raynor responded, using a hypothetical 1-percent figure, that this would cost the Company $3 million. He used companywide figures to obtain this result.[331]

Raines was not present during the July 16 meeting, and there was a tacit agreement not to meet until the campaign was over.

During the campaign, Respondent committed the numerous unfair labor practices described above.

[323] Id., pars. 30, 33, 36.

[324] Both union and nonunion employees received the following raises in the indicated years: 1978, 8 percent; 1979, 7 percent; 1980, two raises, 1 percent and 10 percent; 1981, 9.5 percent; 1982, 5 percent; 1983, 5.5 percent; 1984, 4.5 percent; and 1985, no raises.

[325] R. Exh. 101.

[326] R. Exh. 100.

[327] G.C. Exh. 27.

[328] Testimony of Bruce Raynor.

[329] I conclude that this meeting probably took place in April.

[330] Testimony of Raynor.

[331] Id.

A few weeks after the election, in early September, Raines decided that it was time for a pay raise. The Company had lost money in the first half of 1991—about $1.6 million in the second quarter alone. According, to Raines, he did not receive projections of quarterly earnings until about 3 weeks after the end of the quarter. Nonetheless, Raines decided in early September—before the third quarter was over—that there was a ''little kick to the economy,'' that orders were coming in, and that it was time for a pay raise. He decided upon 5.5 percent to be paid to the nonunion employees.

This information was communicated to the employees. I have summarized above the plethora of unlawful statements on this subject made thereafter to both union and nonunion employees.[332]

A bargaining session was held on September 17. The union representatives were the same, but the Company was now represented by Bob Moore and an attorney. Raynor stated that the Union had heard about a raise to the nonunion employees, and proposed a 6-percent increase. Moore countered with a 4-percent proposal. Although Raines was not present at this session, he testified that the Company was in a ''very aggressive bargaining'' posture. Accordingly, it was decided to offer the Union less than the amount the nonunion employees had received. No agreement was reached on September 17.

The next session was held on September 27. The Company increased its offer to 4-1/4 percent, and the Union reduced its demand to 5-1/2. Raynor lectured the Company on its departure from companywide raises, and what he called its ''slap in the face'' to the employees that had built the Company. The union members voted to reject this proposal.

At a session on October 17, Moore acknowledged that the raise to the nonunion employees was 5-1/2 percent, and that the effective date was September 8 or 9, depending on the shift. There was no change in the Company's position, except that the effective date of its proposal had been pushed forward due to the lack of union ratification.

An extended debate between Raynor and Moore took place. The company representative asserted that the Union had settled with other companies at close to the amount the Company was offering. Raynor responded that none involved as long a wait since the last raise, and none involved a higher raise to nonunion employees. Moore acknowledged that the union plants were as efficient as nonunion facilities. When Raynor again pointed out that the Company was departing from its prior companywide policy on raises, Moore replied, ''Well, it's true . . . [But] we're not obligated to do so. We're doing something different.''[333]

Union Representative Sydney Young testified that he had a telephone conversation with Moore sometime before October 23, the time of a scheduled arbitration. The date was about October 21, although Young was uncertain. The conversation concerned the arbitration, but Young brought up the negotiations. Moore seemed hostile, and finally declared that the Company was not going to put 5-1/2 on the table as long as the Union was ''harassing the Company and being irresponsible.'' Asked what this meant, Moore replied that it meant the arbitrations Young was filing and the fact that the Union ''picked a fight'' with the Company at Kannapolis when it was having financial problems. Moore denied the conversation, and asserted that he was out of the office on October 21. Nonetheless, he acknowledged dealing regularly with Young about arbitration matters, sometimes on the telephone, and agreed that he had an arbitration with Young on October 23. I credit Young's testimony about this conversation.

The next bargaining session was held on November 4, and the parties' positions remained the same. Raynor asked whether the Company could afford the Union's proposal. Moore replied that it could, but did not want to do so. Asked again about the Company's departure from prior companywide practice, Moore replied, ''Why don't you just put it down that we're stingy.''

The Union filed the charge on this issue on the same day as the November 4 bargaining session, and complaint issued on December 30.

The parties had a final bargaining session on January 13, 1992. The Company increased its offer to 4-1/4 percent, and pushed the effective date forward to January 12, 1992. The Union responded that the Company was still obligated to offer the same 5-1/2 percent to the Union. However, after a caucus, the Union agreed to accept the 4-1/2-percent increase on condition that it retained the right to litigate its position before the Board and the courts. Moore testified that the Company agreed to this condition, and the written supplemental agreement provided that ''both parties reserve the right to assert any and all claims and any and defenses in any and all litigation involving the collective bargaining leading to this agreement.[334]

The conditions of the Company's offer were spelled out to the union members, and were ratified. Thereafter, the new agreement was implemented in the union plants.

Factual and legal conclusions

As set forth above, the complaint alleges that Respondent violated Section 8(a)(3) of the Act by granting an across-the-board increase to its nonunion employees, while failing to offer the same increase to its union employees. The complaint also alleges that the failure to offer the same increase to the union employees constituted bad-faith bargaining violative of Section 8(a)(5) of the Act.

The record contains overwhelming evidence that the 5-1/2-percent increase to the nonunion employees, coupled with the refusal to make the same offer to the Union, was discriminatorily motivated. It is difficult to select the most egregious of the many statements by supervisors to employees, but perhaps the most explicit was the statement that the Company's intention was to discredit the Union and drive it out of the mill.[335] Equally explicit was the statement by Company Negotiator Moore to Union Representative Young during the negotiations.

The timing and amount of the increase constitute additional evidence of discriminatory motivation. The Company had sustained losses in the millions of dollars through the second quarter of 1991. Nonetheless, a few weeks after the election, before the third quarter was over and before Raines had any concrete figures, he decided to give a pay raise of

[332] Supra, secs. II,PP and QQ. See summary at end of sec. II,QQ.
[333] Testimony of Bruce Raynor.
[334] R. Exh. 111.
[335] Supra, fn. 331.

5-1/2 percent to the union employees only. This was the largest increase in 8 years.

The Board has previously concluded with judicial approval that withholding a pay increase to union members in circumstances such as these violates both Section 8(a)(3) and (5) as well as Section 8(a)(1) of the Act. *Eastern Maine Medical Center*, 253 NLRB 224 (1980), enfd. 658 F.2d 1 (1st Cir. 1981). In that case, a nurses' union was certified in March 1976, and thereafter attempted without success to obtain a contract. In December 1976, the employer announced a survey of wages to determine the amount of the next general increase. The survey showed that the represented nurses as well as other employees were due the increase. However, in April 1977, the employer announced a 7-percent increase ''except for the nurses with whom we are currently dealing'' (id., 658 F.2d at 7). The nurses thereafter voted to decertify the Union. The administrative law judge concluded that the withholding was discriminatorily motivated, and was sustained by the Board and the Court of Appeals for the First Circuit. The decision of the latter contains the following language:

> EMMC (the employer) does not dispute that but for the presence of the union it would have granted the nurses both the 1976 and 1977 pay raises, yet at no time, through the end of negotiations was it willing to offer these sums to the Union. Not only did the hospital fail to offer pay raises retroactively, a practice we held to violate § 8(a)(3) when coupled with bad faith bargaining (authority cited) but it failed to offer, on any terms, more than a fraction of the wages lost by the nurses as a result of their decision to organize. Thus, while suspending any increase until the close of negotiations, and thereby causing wages for some registered nurses to fall behind those of graduate nurses, EMMC also proposed to deny the greater part of the increase permanently to bargaining unit employees. Magnifying this effect, beginning after the election and continuing through bargaining, EMMC announced and implemented a cornucopia of fringe benefits for non-unit employees. And, in January and March 1978, after the nurses had voted to decertify the union, the hospital unilaterally increased nurses' wages approximately 18 percent. [Id., 658 F.2d at 9.]

Turning next to the 8(a)(5) allegation, Respondent's refusal to grant the same increase to the union employees was a departure from past practice. The record shows that wages were the same for union and nonunion employees for the 8 years preceding 1986. In that year a dispute with the Union arose over third shift differential pay. Resolution of the dispute was different with respect to the employees represented by UTW as well as the nonunion employees. The UTW employees did not receive the buyout.

In the following 2 years, 1987 and 1988, the new nonunion employees from Cannon Mills actually received slightly less than the union employees because of adjustment of their rates to conform to the Company's existing rates.

The policy of uniformity was resumed in 1989 and 1990. During the campaign in 1991, Patricia Boone wrote a letter to employees that compared union and nonunion benefits unfavorably to the Company. Supervisor Jim Perkins replied that the benefits were the same.[336] When Union Representative Raynor repeatedly pressed Company Negotiator Moore about uniformity in the 1991 negotiations, Moore finally admitted, ''Well, it's true [but] we're not obligated to do so. We're doing something different.''

I conclude that the Company had a history of paying the same wages to union and nonunion employees. The only exceptions were incidental to the 1986 purchase of Cannon Mills and a dispute over differential pay. Even then, the employees represented by UTW received the same increase as the nonunion employees, while those represented by the Union herein received a cash bonus for giving up differential pay and for receiving a slightly lower general increase. The Company returned to uniformity in 1989 and 1990, argued with union proponents during the campaign in 1991 that this was the case, and admitted it during the contract negotiations.

In *Rocky Mountain Hospital*, 289 NLRB 1347 (1988), the employer, during negotiations with the union, announced a wage increase for nonunion employees, with a statement that the union employees were excluded because their wages were subject to negotiations. The Board stated:

> An employer has a duty not to change past practices for employees who are represented by a union until it has bargained to impasse on that subject with the union. *NLRB v. Katz*, 369 U.S. 736, 745–747 (1962). The Respondent had not bargained to impasse on the question whether it would give an increase to the LPN-technical [union] employees. By effectively announcing to them that they would be excluded from any increase, the Respondent not only advised the employees of an action it could not lawfully take at that point, but it also, as the judge found, ''discredited and disparaged the Union in the eyes of its members.'' [Id., 289 NLRB at 1348.][337]

This is exactly what Respondent did in this case. During negotiations it announced an increase for nonunion employees and made the numerous unlawful statements described above which disparaged the Union.[338] The parties had not bargained to impasse over the issue of wages. In fact, they had not bargained at all on this issue.

I accept the agreement of the parties that the legality of Respondent's refusal to offer the same increase to the union employees was reserved for litigation. I conclude that in so refusing it violated Section 8(a)(1), (3), and (5) of the Act. The refusal to bargain took place on September 8 or 9 (depending on the employee's shift), when the raise to the nonunion employees was announced. For purposes of simplicity, I shall fix the date as September 9. The same date was the beginning of the 8(a)(3) violations. *Eastern Maine Medical Center*, supra, 253 NLRB at 241–243.

The Charging Party's additional evidence

Steve Weingarten, an industry development specialist employed in the International union's research department, testified that he attended a meeting which was addressed by Re-

[336] Supra, sec. II,X,1.

[337] Accord: *Phelps Dodge Mining Co.*, 308 NLRB 985 (1992); *Central Maine Morning Sentinel*, 295 NLRB 276 (1989).

[338] Secs. II,PP and QQ.

spondent's executives. The meeting was held in the New York offices of the Merrill Lynch investment firm, in April 1992. Along with representatives of other firms, the Fieldcrest executives presented their views of the Company's future.

After several of the Company's officers had addressed this matter, Jim Fitzgibbons was introduced as the Company's chief executive officer. During a question and answer period following his remarks, he was asked how the labor dispute would affect the Company.

Fitzgibbons discussed the issues on the wage proposal. He said that the Company ''watched out'' for its nonunion employees, and that there were many of them in the South. ''It's a war, and we do not intend to be organized,'' Fitzgibbons told his listeners, according to Weingarten. Fitzgibbons did not expect another election, but was acting as if there would be one. ''We want to put a chink in every hole in the dike,'' he told the audience. The litigation would be a ''long one,'' and would probably go to a circuit court of appeals. Fitzgibbons stated that his lawyers had advised him that the Company's actions would ''likely be upheld on appeal.''

Weingarten's testimony is uncontradicted and is credited.

In accordance with my findings above, I make the following

CONCLUSIONS OF LAW

1. Fieldcrest Cannon, Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Amalgamated Clothing and Textile Workers Union of America, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1) of the Act by engaging in the following conduct:

(a) Coercively interrogating employees concerning their union sympathies and activities.

(b) Threatening an employee with discharge if he did not revoke his union authorization card.

(c) Threatening employees with loss of benefits, if they selected the Union as their representative.

(d) Threatening employees with termination if they selected the Union as their representative.

(e) Telling employees to resign, because of their union activities or sympathies.

(f) Threatening an employee with discharge for having met with a representative of the National Labor Relations Board.

(g) Threatening employees with discharge for association with known union supporters.

(h) Threatening employees with plant closure if they selected the Union as their representative.

(i) Threatening Spanish-speaking employees with deportation or imprisonment if they signed union cards.

(j) Threatening employees with unspecified reprisals for engaging in union activities.

(k) Threatening employees with unspecified reprisals if they selected the Union as their representative.

(l) Ordering an employee to wear an employer T-shirt.

(m) Threatening to discharge an employee because of union activity.

(n) Threatening to suspend and otherwise discipline employees because of their union activity.

(o) Threatening employees with more stringent enforcement of rules if they selected the Union.

(p) Telling employees that they were assigned additional work because of their union activities or sympathies.

(q) Making disparaging remarks about the Union in the context of other coercive statements.

(r) Engaging in, and creating the appearance of, surveillance of its employees' union activities.

(s) Threatening to watch an employee more closely because of his union activities.

(t) Restricting the movement of union supporters within the plant because of their union activities, in order to restrict their access to other employees.

(u) Restricting prounion employees to their work areas while simultaneously allowing procompany employees to leave their work areas.

(v) Telling employees that bargaining would begin from scratch in the context of other statements that benefits would be reduced.

(w) Telling employees that their selection of the Union would be futile.

(x) Promulgating a rule prohibiting employees from talking about the on the job, while permitting discussion of other topics.

(y) Promulgating a rule prohibiting employees from engaging in union activities in nonwork areas during nonwork times.

(z) Polling its employees regarding their support for the Union.

(aa) Prohibiting employees from having union literature in their possession or work place while allowing procompany employees to have procompany literature.

(bb) Allowing procompany employees to return late after lunch periods while prohibiting prounion employees from doing the same.

(cc) Allowing procompany employees to distribute campaign literature on company time in violation of its rules, while prohibiting prounion employees from doing the same.

(dd) Prohibiting only union employees from distributing union literature during nonwork time in nonwork areas.

(ee) Soliciting, remedying, or promising to remedy, employee grievances in order to discourage their support of the Union.

(ff) Telling a prounion employee that she would no longer receive higher paid temporary assignments because of her support of the Union.

(gg) Promising its employees unspecified benefits in order to induce them to withdraw their support of the Union.

(hh) Soliciting an employee to withdraw an affidavit submitted to the National Labor Relations Board.

(ii) Instructing an employee to remove union campaign insignia.

(jj) Allowing employees to buy first quality goods at a discount in order to discourage them from supporting the Union.

(kk) Telling employees that their selection of the Union would inevitably lead to strikes, in the context of other unlawful statements.

(ll) Telling its union employees that, because of their support of the Union, they would receive a wage increase less than that granted to nonunion employees.

(mm) Telling its nonunion employees that they would receive a greater increase than the union employees.

(nn) Threatening employees with discharge if they went on strike.

(oo) Announcing a new rule more stringently enforcing work rules, in retaliation for the employees' Union activities.

(pp) Telling an employee that a supervisor would no longer associate with her, and that she would not be used for further translating activities, because of her union sympathies.

4. Respondent violated Section 8(a)(3) and (1) of the Act by engaging in the following conduct, because of the named employee's union sympathies or activities:

(a) Issuing warnings to Benny L. McIntyre, Wendy Ashcraft, Perry L. Hopper, Osborne Bennett, Shirley Hamilton, Ronald Teeter, Roy Walters, and Patricia Boone.

(b) Suspending Elboyd Deal from May 6 to 11, 1991, and Alton W. Linton from August 13 to 20, 1991, when he was discharged.

(c) Assigning more onerous work to Eldridge Henry.

(d) Removing Robin Teal from assignments as temporary supervisor, beginning August 22, 1991.

(e) Discharging the following employees on the dates indicated, all in 1991: Sylvia Walter (August 8); Alton W. Linton (August 20); Osborne Bennett (August 10); Wendy Ashcraft (August 16); Reginald Turner (August 19); Elboyd Deal (August 21); Charles Cordle (August 25): Ronald Pharr (August 27); Earl White (August 30); Roy Walters (September 12); Ronald Teeter (September 13); Susan Cavin (September 21); and Cathy Thompson (November 6).

5. The Respondent also violated Section 8(a)(4) of the Act by the discharge of Elboyd Deal, described above, which was based in part on the fact that Deal gave an affidavit to the Board; and by discontinuing translation services of Oreida Clarke, beginning about April 11, 1992, because she gave testimony in the current hearing.

6. All production and maintenance employees, excluding office clerical employees, guards, and supervisors as defined in the Act, constitute separate units appropriate for the purpose of collective bargaining at Respondent's plants located at Eden, North Carolina, Fieldale, Virginia, Phenix City, Alabama, and Columbus, Georgia.

7. Since about April 1, 1990, and at all times material, the Union has been the designated exclusive collective-bargaining representative of the employees in the units described above in paragraph 6, and has been recognized as such by Respondent, as embodied in successive collective-bargaining agreements.

8. Respondent violated Section 8(a)(1), (3), and (5) of the Act on September 9, 1991, by granting a wage increase to its nonunion employees and failing to grant the same increase to its union employees in the units described above in paragraph 6.

9. The foregoing unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

10. Respondent has not violated the Act except as found here.

THE REMEDY

It having been found that Respondent has engaged in certain unfair labor practices, it is recommended that it be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the purposes of the Act.

I shall recommend that Respondent be ordered to cancel the warnings listed in paragraph 4(a) of the preceding section of this decision, remove them from its records, and notify each employee in writing that it has done so and that said warning shall not serve as the basis for any further discipline of said employee.

I shall recommend that Respondent be ordered to reassign Eldridge Henry to the work which he had prior to its discriminatory assignment to him of more onerous work.

I shall recommend that Respondent be ordered to offer each discharged employee named in the preceding Section 4(e) immediate reinstatement to his or her former position, or, if such position no longer exists, to a substantially equivalent position, dismissing if necessary any employee hired to fill said position, and to make him or her whole for any loss of earnings he or she may have suffered by reason of Respondent's unlawful conduct, by paying him or her a sum of money equal to the amount he or she would earn from the date of his or her unlawful discharge to the date of an offer of reinstatement, less net interim earnings during such period, to be computed on a quarterly basis in the manner established by the Board in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).[339]

It is further recommended that Respondent be ordered to remove from its records all references to the foregoing discharges, and to notify each of the employees, in writing, that this has been done, and that evidence of said discharge will not be used as a basis for further discipline of said employee.

I shall further recommend that Respondent immediately reassign Robin Teal and Oreida Clarke to their duties as temporary supervisor and translator, respectively, and make them whole for any loss of earnings they may have suffered, in the manner set forth above.

I shall recommend that Respondent be ordered to return Joanne Diggs to her former position as an instructor, from which it removed her on about July 1, and to make her whole in the manner described above for any difference in pay between her job as an instructor, and her new job as a hemmer. Although Diggs was not alleged as a discriminatee, the General Counsel announced at the hearing an intention to seek a make-whole remedy for her, without opposition from Respondent.

Additionally, I shall recommend that Respondent be required to make whole Elboyd Deal and Alton W. Linton for the unlawful suspensions described above in paragraph 4(b) of the preceding section, in the manner described above, remove its records of same, and provide Deal and Linton with the notice it has done so as described above.

I shall also recommend that Respondent be ordered to make whole its union employees for any monetary loss they may have suffered by reason of Respondent's failure to include them in the September 9, 1991, increase given to nonunion employees. The Board's remedy in *Eastern Maine*

[339] Under *New Horizons*, interest is computed at the ''short-term Federal rate'' for the underpayment of taxes as set out in the 1986 amendments to 26 U.S.C. § 6621. Interest accrued before January 1, 1987 (the effective date of the amendment) shall be computed as in *Florida Steel Corp.*, 231 NLRB 651 (1977).

Medical Center, supra, adopted by the Board and the court of appeals, provided that the employer:

> Make whole the employees in the unit found appropriate . . . for any monetary loss they have suffered as a result of Respondent's failure to make applicable to such employees the increased wages and benefits generally granted to its unrepresented employees . . . together with interest, in accordance with the remedy section of this decision. [253 NLRB at 250.]

The same remedy for the same discrimination is appropriate in this case. The Board has approved of the same remedy in a case where the only violation was unlawful unilateral withholding of the increase from the union employees, *Central Maine Morning Sentinel*, supra, and where the same unilateral action was held to be violative of both Section 8(a)(3) and (5), *Phelps Dodge Mining Co*., supra. See also *Our Way, Inc*., 268 NLRB 394 (1983).

Respondent's obligation is to pay the represented employees in the units described in Conclusion of Law 6 the same amounts which they would have received had they been granted the same increase on September 9, 1991, plus interest. Amounts already paid may be offset against this obligation.

Respondent argues that the Board has ''no authority'' to grant such a remedy. ''The Supreme Court has made it clear that the Board may not, either directly or indirectly, compel concessions or otherwise sit in judgment upon the substantive terms of collective bargaining agreements (citing *NLRB v. American National Insurance Co*., 343 U.S. 395, and *H. K. Porter Co. v. NLRB*, 397 U.S. 99 (1970)). The appropriate remedy assuming a violation would be a cease and desist order, an order to bargain in good faith, and an order to post a notice to employees.''[340]

This argument misstates the agreement of the parties. That agreement was to let the dispute over the pay differential be resolved by the Board and the courts. In making this resolution, the Board is simply complying with the agreement of the parties, much like an arbitrator in an arbitral proceeding. It may further be doubted that a remedy for discrimination under Section 8(a)(3) of the Act constitutes the imposition of a contractual agreement upon an employer.

As Respondent's arguments are without merit, I shall recommend the remedial order described above. I shall also recommend the posting of notices.

I further conclude that Respondent ''has engaged in such egregious or widespread misconduct as to demonstrate a general disregard for employees' statutory rights.'' *Hickmott Foods*, 242 NLRB 1357 (1979). Accordingly, I shall recommend a broad order.

The Objections

1. Summary of prior findings

The Union filed 21 timely objections. Objections 1 through 11, 14, 15, 17, and 19 restate in substantially the same language conduct which I have already found to have taken place and which constituted unfair labor practices. Accordingly, these objections are sustained.

[340] R. Br. 509–510.

2. Objection 16

a. *Summary of the evidence*

Objection 16 alleges that Respondent interfered with a fair election by impeding the progress of observers releasing workers to vote. Numerous witnesses testified that, after the polls were open and the releasing observers were releasing the employees to vote, supervisors walked ahead of or behind the releasing observers carrying placards which listed a long series of strikes in which the Union had engaged since 1986.[341]

Several of the supervisors showed the placard to employees while at work. Angela Coleman, a releasing observer, testified that Personnel Manager Ron Lisenby, carrying a placard, told employees that this might happen to them. Coleman was very close to Lisenby, and protested that he had no right to do this. On several occasions, Coleman had to wait for Lisenby to get out of the way. I credit her testimony.

Lisenby agreed that he arrived at various work sections about 15 minutes before they were scheduled to be released, talked to employees, and carried the placard. He was in front of the releasing observers.

Norma Chapman testified that Lisenby showed the placard to employees waiting in line to vote. The voting took place in the conference room on the fourth floor of the towel sewing department. The line of voters started within that room, and extended out the door into the plant area. On cross-examination, Chapman testified that there were about 50 employees in the line when she was waiting to vote. She was standing about midway in the line, together with other employees from her section. The employee behind Chapman tapped her on the shoulder, and asked her to turn around and look. She saw Lisenby behind her showing the placard to employees standing in line. Lisenby stood still, and allowed the employees to read the poster.

Lisenby agreed that the line of voter extended outside the conference room. Asked whether he showed the poster to employees standing in line, Lisenby replied: ''No, I didn't. I tried my best to stay away from that line.''

Chapman's testimony was detailed and precise on cross-examination. She was a current employee at the time of her testimony, and it is unlikely that she testified falsely. I credit her testimony that Lisenby showed the placard to employees standing in line to vote.

b. *Legal conclusions*

Respondent argues that its conduct did not violate the *Milchem* rule[342] because the supervisors' conversations with employees on the plant floor did not take place in a polling area or where the employees were waiting to vote. Respondent cites *Boston Insulated Wire & Cable Co*., 259 NLRB 1118 (1982), enfd. 703 F.2d 876 (5th Cir. 1983), and *Bally's Park Place*, 265 NLRB 703 (1982). In the latter case the Board concluded that the conduct was not objectionable ''because the statements that were made were not made to voters in the polling place or while waiting in line to vote, *nor was the conduct otherwise of a nature to warrant an inference*

[341] C.P. Exh. 16.

[342] *Milchem, Inc*., 170 NLRB 362 (1968).

that it interfered with the exercise of employee free choice.'' [Id., emphasis added.]

I have found that the Respondent's prediction of strikes was unlawful.[343] Its presentation of posters listing the Union's history of strikes was merely a continuation of this unlawful conduct on the day of the election. Further, the fact that Lisenby showed the poster to employees waiting in line to vote establishes Respondent's violation of the *Milchem* rule—Lisenby effectively communicated with them while they waited in line by standing there and letting them read the poster.

The precise allegation in the objection—that Respondent impeded the progress of the releasing observer—is established by Coleman's testimony. The remaining facts were thoroughly litigated. I sustain Objection 16.

3. Objection 18

The objection contends that a fair election was made impossible because of the distribution of literature predicting plant closure and the loss of jobs if the employees selected the Union. I have already determined that Respondent engaged in this unlawful conduct. Object 18 is different in that it alleges that various other persons did the same thing, as the agents of Respondent. The acts themselves consisted of newspaper ads and posters, particularly a ''mushroom cloud'' poster seen by employees on telephone poles in the City of Kannapolis, and, arguably, within the plant. The principal alleged agents were a public relations firm which did work for Respondent, and an ill-defined group called the ''Concerned Citizens for Cabarrus and Rowan Counties.'' The evidence shows that Respondent paid the public relations firm for the ads and some of the posters. The Charging Party argues that the public relations firm was an agent of Respondent, and that, in the absence of a finding of agency, the election should still be set aside on the ground that a third party made a free and fair election impossible, citing *Star Kist Samoa, Inc*., 237 NLRB 238 (1978).

The evidence in support of the Charging Party's agency argument is complicated. It would serve no useful purpose to go through this evidence to establish ultimate facts which I have already found to be true. Accordingly, I shall sustain Objection 18 on the basis of the findings I have already made.

4. Objection 20

This objection alleges that Respondent interfered with the election by ''changing the terms and conditions of employment of employees who served as observers.'' By this allegation, the Charging Party means the manner in which Elboyd Deal was discharged, which I have described above. The Charging Party argues that Deal's discharge with ''great fanfare,'' in full view of the employees, while a shift was changing, and by a circuitous route, was objectionable. The Union contends that the manner of the discharge presents a different issue from its lawfulness.[344]

Without deciding the nice distinction raised by the Charging Party, I sustain Object 20, based on the fact that Deal was an observer, and that his discharge was unlawful. It certainly constituted a change in his condition of employment.

[343] Supra, sec. II,OO.

[344] C.P. Br. 68.

5. Objection 12

This objection contends that Respondent created an atmosphere of fear, intimidation, and retaliation in the plant while the election was underway. The presence of supervisors in the plant with the strike posters during the election, and the manner of discharging Deal, support this objection, which I sustain.

6. Objection 21

The Charging Party's concluding argument asserts that the foregoing conduct, in addition to that established by the General Counsel, warrants setting the election aside and directing a new election. I agree.

[Recommended Order[345] and Direction of Second Election omitted from publication.[346]]

Recommended Filing of a 10(j) Petition

I further recommend that the Board file a petition for an injunction under Section 10(j) of the Act, asking the court to enforce the recommended Order and Direction of Second Election herein. The rationale for such action has been stated as follows:

> Section 10(j) . . . was enacted in 1947 in response to Congress' recognition that, because of the lengthy period of administrative hearings before the Board in unfair labor practice cases, ''[i]t has sometimes been possible for persons violating the Act to accomplish their illegal purpose before being placed under any legal restraint and thereby to make it impossible or not feasible to restore or preserve the status quo.'' Thus, the injunctive relief provided for in Section 10(j) is interlocutory in nature and is designed to fill the considerable gap between the filing of complaint by the Board and issuance of final decision in those cases in which considerable harm may occur in the interim.[347]

The Court of Appeals for the District of Columbia Circuit has stated:

> Employee interest in a union can wane quickly as working conditions remain apparently unaffected by the union or collective bargaining. When the company is finally ordered to bargain with the union some years later, the union may find that it represents only a small fraction of the employees. [*International Union of Electrical Workers v. NLRB*, 426 F.2d 1243, 1249 (D.C. Cir.), cert. denied 400 U.S. 950 (1970).]

The Court of Appeals for the Second Circuit has voiced similar concerns:

> Just as a cease and desist order is ineffective as final relief . . . it is, in certain cases, also insufficient as interim relief. If an employer faced with a union demand for recognition based on a card majority may engage in

[345] Fn. 345 omitted from publication.

[346] Fn. 346 omitted from publication.

[347] Morris, *The Developing Labor Law*, Vol. II, p. 1638–1639 (1983), quoting S. Rep. No. 105, 80th Cong., 1st Sess. 27 (1947), *Legislative History of the Labor Management Relations Act*, 1947, at 433 (1948).

> an extensive campaign of serious and pervasive unfair labor practices, resulting in the union's losing an election, and then is merely enjoined from repeating those already successful violations until final Board action is taken, the Board's adjudicatory machinery may well be rendered totally ineffective. A final Board decision ordering a new election will leave the union disadvantaged by the same unfair labor practices which caused it to lose the first election. Even if the Board finally orders bargaining probably close to two years after the union first demanded recognition, the union's position in the plant may have already deteriorated to such a degree that effective representation is no longer possible. Only if the district courts may issue interim bargaining orders can the union's viability be maintained to the degree necessary to make final Board adjudication in the form of an election or a bargaining order meaningful. [*Seeler v. Trading Port, Inc*., 517 F.2d 33, 37–38 (2d Cir. 1975).]

The evidence in this case shows that Respondent intends to utilize the delay in the Board's proceedings in order to defeat the Union. It shows that the Company has committed extensive unfair labor practices prior to and during the unfair labor practice hearing. Among many too numerous to recapitulate, it discriminatorily denied the use of an elevator to an employee who contracted brown lung disease while working for the Company. During the hearing, it discriminated against a witness because she gave testimony. Such conduct strikes at the heart of the Board's processes. The Company's supervisors told employees that the campaign was a ''war,'' that the Company would not bargain in good faith even if ordered to do so, and that it would never sign a contract. The Company's chief executive officer repeated the declaration of war in a speech before Wall Street investors, and explicitly stated that the Company did not intend to be organized. Reiterating statements made to employees by the supervisors, he stated that litigation would be lengthy.

Respondent may argue that the reinstatement and backpay provisions of the Order recommended herein would be premature, and should await final decision by the Board. The Court of Appeals for the Second Circuit has commented on this argument as follows:

> The [district] court also noted that there was no need for a reinstatement order because the Board, if it found that the discharges were in retaliation for engaging in protected activity, could order reinstatement with backpay. That reasoning, however, misapprehends the purpose of 10(j) relief. When the Board files an individual application for such relief it is not acting on behalf of individual. employees, but in the public interest. [Authority cited.] That interest is in the integrity of the collective bargaining process. If union supporters are excluded from the bargaining process pending resolution of unfair labor practice charges, the position of the designated bargaining representative will in all likelihood be substantially undermined. All members of the bargaining unit may be affected by such an erosion of union support. Furthermore, the discharge of active and open union supporters . . . risk[s] a serious adverse impact on employee interest in unionization (authority cited). When the Board, faced with an employer's resort to tactics calculated to undermine union support at a critical stage of the bargaining process, seeks section 10(j) relief, the focus of attention should not be on what relief may ultimately be granted to individual employees but on the likelihood of harm to the bargaining process. in the interim. [*Eisenberg v. Wellington Hall Nursing Home, Inc*., 651 F.2d 902, 906–907 (2d Cir. 1981).]

The Respondent may argue that 10(j) relief is inappropriate, because a complaint has issued and an unfair labor practice hearing has been held. This argument is without merit. In *Asseo v. Pan American Grain Co*., 805 F.2d 23 (1st Cir. 1986), an unfair labor practice hearing was begun, then suspended, and a 10(j) petition was filed. The district court held a 3-day evidentiary hearing, at which it received into evidence transcripts of testimony before the administrative law judge, and also heard live testimony. The district court granted the temporary injunction, and was sustained by the First Circuit.[348] In *Seeler v. Trading Port*, supra, the parties stipulated that the record of the hearing before an administrative law judge was complete and no other evidence was necessary. However, the court did take testimony.

Section 10(c) of the Act provides that the Board's finding of an unfair labor practice must be based on ''the preponderance of testimony.'' However, injunctive relief under Section 10(j) of the Act need be based only on a ''reasonable cause to believe'' that the unfair labor practice occurred. Asseo, supra. Such reasonable cause to believe exists herein.

The cited decisions refer to interim bargaining orders. In those cases, there was other evidence of the union's majority status. In this case there is none, and the Board's policy is not to issue bargaining orders in the absence of any evidence of majority status. However, injunctive relief could prevent delay in the holding of a second election. The recommended Direction of Second Election gives the Regional Director the traditional discretion to set the date of the election. If this discretion were mandated by judicial imprimatur, the Company's calculated policy of delay could be avoided.

The Board need not wait until the filing of exceptions to this decision, if any. The only prerequisite to the Board's authority to file a petition for a 10(j) relief is the issuance of a complaint. For the reasons given above, such filing is recommended.

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[348] See also *Fuchs v. Hood Industries*, 590 F.2d 395 (1st Cir. 1979).